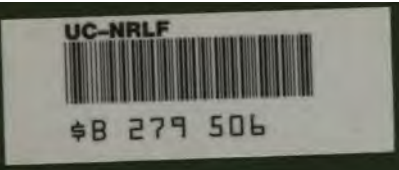

LECTURES ON INSURANCE


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LECTURES

ON

INSURANCE

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FOREWORD

For a long time the lack of an authoritative book dealing with the fundamentals of the various lines of casualty insurance has been apparent. Students of this branch of the business, particularly the younger men and women, have indicated that they would welcome such a volume, but those competent to write it found it impossible to spare the time to do so. Still the need was urgent; a fact that was generally recognized.

The Insurance Society of New York then determined to sponsor a course in casualty insurance. The lectures were given by executives who were recognized as among the best informed and most successful in their particular line. This course was greeted with much interest and enthusiasm by the younger men and women in the metropolitan insurance district.

In order that the valuable information gathered by the lectures would not be lost to the casualty insurance business it was decided to preserve it in book form. So this book constitutes the sixteen lectures.

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LIABILITY INSURANCE PRINCIPLES

General Negligence Principle—Kinds of Care—When Children Are Concerned—General Negligence Rule—Owners' and Lessees' Liability—Who Is Liable

By W. G. Falconer, President Norwich Union Indemnity Co.

The business of liability insurance exists because the law imposes responsibility upon any one who causes personal injury to another person or damages his property, through lack of care. It is this legal responsibility which casualty companies assume under their public liability policies. It is protection against such responsibility which the broker or agent sells. Responsibility is determined by an investigation of the facts in each case and the application of the law of negligence to such facts. Under the law of negligence carelessness is penalized for reparation must be made.

The difficulties which arise in every case are due to a dispute as to the facts, or to a correct interpretation of the legal responsibility arising from a consideration of these facts, and very frequently both are involved. As soon as a public liability accident is reported to an insurance company the testimony of witnesses to the accident is assembled and search is made through the testimony for any evidence of lack of care. The search becomes minute because the smallest details are vital, and every suit is lost or won by the manner in which these details are assembled and considered. Casualty companies, by virtue of their long experience in handling such cases, and by means of their highly trained staff of specialists, who have a thorough knowledge of the law of negligence, have little difficulty in recognizing the vital elements which establish liability or non-liability.

GENERAL NEGLIGENCE PRINCIPLE

The well-established general principle of the law of negligence is that no one has the right to cause injury or to be the cause of injury to another or to damage his property. The law imposes a duty to use care.

The lack of care is negligence, and negligence is the doing of some act which a cautious and prudent man would not do, or the neglecting to do some act which a cautious and prudent man would not neglect.

The law recognizes several kinds of degrees of care which must be exercised under certain circumstances. (1) Ordinary

care. (2) Care dependent on the circumstances. (3) Care dependent on the capacity of the injured.

KINDS OF CARE

The facts in each case will very quickly disclose which of these kinds of care is the important element. It may be that there was a special duty imposed by statute or ordinance, or a special relation between the parties such as carrier and passenger, or special reasons why a high degree of care was necessary such as the handling of highly dangerous things, or the age and condition of the injured.

Ordinary care is defined as that degree of care which is exercised by ordinarily prudent persons under the same and similar circumstances.

Care dependent upon the circumstances may be defined in simple language as follows: the greater the danger, then the greater the care required.

Care dependent on the capacity of the injured means in general that great care must be exercised to prevent injuries to persons who are mentally or physically incapable of understanding danger. This would apply to the case of a person who was an idiot, or intoxicated, or had defective eyesight, or a child. A storekeeper who knows that a customer has defective eyesight, and fails to warn him properly about an open trapdoor in the middle of the floor provided for customers, would be liable for the results. Likewise, in the case of persons lawfully on the premises and not of sufficient capacity to understand dangerous machinery.

WHEN CHILDREN ARE CONCERNED

In the case of children the responsibility broadens considerably. A boy of eight came on a farmer's land, where the latter was mowing hay. The farmer permitted the boy to get on the machine and drive the horses. The boy was thrown from the seat and, falling upon the knives of the machine, was injured. It was said in that case that the farmer did not exercise due care. The degree of care which must be exercised is measured by the maturity and instincts of the child. While the case against the farmer proved successful, a case against a householder for the death of a neighbor's child caused by an accident in his home proved unsuccessful. A young child had been invited into the home by the defendant's daughter who was a slightly older child. The latter in the course of doing some work around the house placed a large vessel of hot water on the kitchen floor into which the younger child fell and as a result was scalded to death.

Sometimes accidents occur without any knowledge on the part of the person who caused the accident that any danger or

defect existed or could be anticipated. In the ordinary case it is the duty of the injured to show knowledge on the part of the defendant of the defect or danger, but in some cases knowledge may be implied. The facts may show that the defendant negligently remained in ignorance or he could have discovered the danger by the exercise of reasonable care. A man was killed while standing near his dwelling 200 yards away from a railway cut where blasting was being done. Rock had previously landed near the same spot by the blasting. It was held that the defendant should have known of such facts and taken precautions. In the case of the owners of public halls and theatres, where an absolute duty is cast upon them to keep their premises safe, it is not difficult for the plaintiff to show knowledge, but it may be more difficult where the accident is due to the faulty construction of the building and where the owner has employed a responsible contractor and architect. In the case of an accident in a creamery where a person not an employee was injured by the breaking of a belt, knowledge on the part of the defendant was shown by proof of the fact that this particular belt had broken before, and that such belts sometimes break. The person injured was on the premises by invitation. In another case, a woman was injured by the act of a neighbor in pulling down a dumb-waiter. The waiter had been pulled up to the plaintiff's apartment, and while placing articles on a shelf therein, she put her head inside of it, and as it was pulled down she was injured. It was held in that case that the defendant had no knowledge nor any reason to anticipate that she would put her head inside of the waiter.

DEFENDANT NOT RESPONSIBLE

Sometimes accidents occur on the defendant's property, or through the fault of his employee, or even through his own act, and for which there is no responsibility upon the defendant. One may make an excavation on his private property and some one fall into it. The defendant would be doing a perfectly lawful act in making the excavation on his private property, and in such a case he is not bound to take means to prevent accidents to third parties. The best illustration, however, is in the case of an act which is done in an emergency. An employee of a restaurant picked up a gasoline lamp which had become improperly ignited, to carry it outside, and while going to the door was severely burned, causing him to throw the lamp, which exploded and injured someone. The employer was held not liable in that case because the act of the employee was done in an emergency. Where an act is done in such a brief period of time that there is no opportunity to decide the best course to pursue, negligence cannot be predicated upon it.

Acts which are wilful and wanton carry legal responsibility, and even in those cases where the defendant may say that he was acting in perfectly good faith or with good intentions, or under the belief that the method employed was perfectly safe.

A little more difficult are those cases where the defendant admits he may have been at fault but says he performed the act according to the usage or custom of the trade or business. There is a custom in the oil business for a seller not to make any representation as to the character of the gasoline sold nor to give instructions as to handling or storing it. It was held, however, such a custom did not relieve the seller of the duty to tell purchasers of 87 deg. gasoline of its dangerous qualities. In testing the question of negligence, some weight may be given to custom or usage, but if the defendant's omission or act was not what ordinarily prudent men would do, then there is responsibility.

Where the act complained of resulted from the violation of a statute or ordinance responsibility usually follows:

GENERAL NEGLIGENCE RULE

The general rule is that if a defendant has neglected some duty imposed by statute there is negligence. Damages will in such cases be awarded even if the defendant is penalized under the statute itself for the offense.

This form of negligence is called by lawyers, *per se* negligence. Failure to label poison in a bottle as required by statute; sale of cartridges for use in a toy pistol contrary to statute; failure to fill in or enclose by a fence or wall a dangerous excavation on property in a city as required by ordinance; failure to provide fire escapes; failure to comply with the statute providing that openings for elevators, not otherwise closed, shall be protected by substantial guards, are cases of negligence *per se*.

There is a class of case which frequently arises in large cities where violation of an ordinance does not carry liability. We have city ordinances which require owners of buildings to erect fireproof shutters on the windows of brick buildings. Such ordinances are passed for the purpose of giving public protection against fire, but they do not give the owner of an adjacent building the right to claim damage if his building is also burned through the lack of compliance with this ordinance.

There is also the case of a city ordinance requiring machinery to be guarded against injury to employees. This would not give a person not an employee a right of action on that violation. The point in these cases is that where the ordinance is for the benefit of the public at large and not merely for the individual, liability cannot be predicated upon that violation.

STATUTE FOR BENEFIT OF INDIVIDUALS

A totally different situation arises where the ordinance or statute is for the benefit of individuals such as an ordinance requiring the erection of fire escapes in buildings. The owner of a building under such circumstances cannot escape liability by saying that the public authorities failed to tell him so, even if the statute requires the public officer to inform him. The general rule is that, where a specific requirement is demanded by statute for the benefit of individuals, its omission is negligence.

Violation of a statute in regard to the construction of a building is negligence even if the plans have been approved by the building department or by the fact that the violation was committed during the absence of the person responsible.

Where architects who were employed to supervise the reconstruction of a building permitted certain beams to rest on partitions, in violation of the New York Statute, they were nevertheless negligent although the beams were placed on the partition between the morning and afternoon inspection of the same day and covered with flooring to prevent them from seeing how the work was done.

In such cases, the cause of the injury must be the non-compliance with the statute or ordinance.

UNAVOIDABLE ACCIDENTS

There is another class of cases termed pure and unavoidable accidents where no liability attaches. It was held to be an inevitable accident in Pennsylvania where an employee in a store stumbled over a roll of matting and injured another person in the store making a purchase. The proper interpretation of the rule is that an accident caused without any one's fault and without one's foresight or expectation carries no liability. For instance, plaintiff was injured by the accidental discharge of a gun held by defendant. Defendant did not see the plaintiff or point the pistol at him. In another case, an injury was caused by a horse which became frightened and unmanageable, without fault on the driver's part. The accident to a pedestrian was deemed to be unavoidable.

An accident resulting from the Act of God or superior agency without the fault of defendant does not impose liability. Winds of unusual and extraordinary violence, extraordinary rainstorms, floods, fires and frosts are termed acts of God.

OWNERS' AND LESSEES' LIABILITY

A large proportion of the public liability insurance written to-day is for owners and lessees of property. The owner is

liable for injury caused by the falling of material or other substances from buildings by reason of their defective construction. It would be negligence to maintain a building in such proximity to the street that in the ordinary course of things, snow and ice would be liable to fall upon passers-by, or to maintain a coal-hole or elevator on the sidewalks in a defective condition. It would be negligence in the case of a theatre building not to have proper exits and fire-escapes for use in an emergency such as a fire or panic.

An owner would be liable for accidents caused by defective stairs, poorly lighted hallways, defective ceilings, defects in elevators or negligence of the elevator operator. Leaving a feather duster upon a stairway upon which a customer in a store slipped was held to be negligence.

The general rule is subject to qualification if the defective condition is obvious to a prudent person, in which case the owner may be excused where there is positive stupidity on the part of injured person.

A suit arose over an accident which occurred at a building which had two entrances, one the main entrance and the other fastened, and the door to the cellar was in close proximity to the main entrance, but without a sign to distinguish the one from the other. A person mistakenly opened the door to the cellar and, falling down, was injured. It was held that the opening to the cellar was in the nature of a pitfall or trap.

Elevators are a very common cause of accidents. Sidewalk elevators, in particular, are the cause of many accidents. Effectual precautions should be taken by the owner to prevent accidents, and regular inspections are essential for his protection.

The owner of a building owes a duty to persons using, or invited to use his building to see that it is kept in a safe condition. This he should do by means of inspection from time to time. The owner of a building would not be held liable if he did not have reasonable time to repair the defect after knowledge or notice of it.

Building contractors usually carry public liability insurance. There is the possibility of accidents not only to employees or sub-contractors, but passers-by or persons in adjoining premises. A building contractor would be held liable for the fall of a fence upon a passer-by even if blown down by an unusually high wind. The collapse of a building in the course of construction or alteration would be due to defect.

DETERMINING WHO IS LIABLE

Questions of difficulty arise where there is a question as to who is actually liable. No question would arise where the

owner alone is in possession of the premises. An owner would be liable even if his premises were in the possession of a licensee, a contractor, or a tenant, provided in the latter case the owner is obliged to make repairs.

If a horse and vehicle were borrowed from another, the owner would not be liable for any accident because the negligent act would be solely caused by the borrower.

Manufacturers or vendors of different products owe a duty to the public who buy their product, and breach of that duty is negligence.

The manufacturer or vendor who sells an article dangerous in kind, owes to the public a positive and active duty to employ care, skill and diligence to limit that danger. Explosives, poisons, drugs and chemicals are in this list. A manufacturer who delivered a carboy of nitric acid to a carrier without notice of its contents, was held liable to a second carrier to whom it was delivered by the first for injury due to such negligence. A manufacturer of oil negligently sold an explosive fluid as fit for illuminating purposes, and thereby was the cause of a death. It was held that even although the fluid had passed through the hands of a number of vendors before it reached the purchaser, the manufacturer was liable.

Even the humble plumber or gasfitter may be held liable for injuries caused by gas explosions due to defective apparatus because he is dealing with a highly dangerous thing. The owner of a proprietary medicine which was sold to and resold by a druggist was held liable to the consumer for injury caused by a poisonous ingredient. The mere bursting of a gun will not hold a manufacturer liable. There would have to be proof that he had not used due care and skill in the manufacture.

MORE DIFFICULT CASES

A little more difficult are those cases of sale of things harmless in kind but which become dangerous through defect. Where the vendor or maker has knowledge of the defect and deals with it in such a way that it is likely to injure innocent persons, there is liability for injuries independently of contract.

The explosion of a soda water bottle causing injury to the child of a customer was held by a jury not to be liable due to defect or negligence of the soda-water manufacturer.

The manufacturer showed that the bottle was tested before being used, and that the explosion was either due to the sudden exposure of the bottle to a current of warm air (the bottle in this case had burst as it was being taken out of a refrigerator), or to unavoidable accident.

If the maker or vendor of an article had no knowledge of the defect in the article sold to a customer, he cannot be held

for negligence. The manufacturer of a steam engine was held not liable to the employee of a purchaser for an accident caused by defect in a valve, because the use of a valve of that kind was not imminently dangerous to human life.

If an accident is caused by a long standing defect which had not been remedied by the owner or where the maker of an article furnishes equipment from poor materials, it is not difficult for the plaintiff in a suit for damages to show knowledge of the defect in the articles.

The owner of a wagon was held liable for injuries to an employee of his customer, who was helping to unload the wagon and received injury by a long-neglected defect in the wagon. A factory owner who furnished a staging to the employees of a fire extinguisher company on which they might walk or stand in doing their work, was held liable because he was the maker of the staging which broke through defective material.

Numerous cases have been brought against vendors who have sold unwholesome food. In the sale of provisions for private consumption the vendor is bound to know that they are sound and wholesome at his peril. Sometimes impurities are found by the purchaser in beverages which are sold as harmless and refreshing.

JOINT RESPONSIBILITY

Sometimes more than one person is concerned in the liability. All persons jointly concerned in the negligence which caused the injury are liable therefor. If two persons hired a wagon jointly and both were in possession of it, both would be liable, called joint and several liability. If the concurrent negligence of two or more persons combined together results in an injury to a third person, he may recover from either or all. For instance, a company owning a telegraph pole allowed it to get into a rotten condition, and another company preparing to remove it dug an excavation for the purpose of removing it, and so left it, both companies were held liable to a passer-by who was injured through the falling of the pole. The comparative degree of negligence of the two defendants is not considered, each being liable for the whole.

DELEGATION OF PERFORMANCE OF WORK

Responsibility of Master for Acts of His Servant—Status of Contractors—Actions of Servants Within Scope of Employment—Court Holdings

By W. G. Falconer, President Norwich Union Indemnity Co.

A master's responsibility for the acts of his servant arises from the fact that he has to delegate to others the performance of work which he cannot personally perform. The persons whom he employs are designated servants in this branch of the law of negligence, and, while acting for him and in his interests, are in reality acting as an extension of his two hands. The law of negligence follows the employer's hands into all their extensions, and if, in the course of their movements, in reaching out to do something, personal injuries, or damage to the property of others is caused by negligence, the employer must pay damages to the person injured. The negligence of an employee in leaving a coal hole open in the sidewalk after he is instructed to close it; leaving a horse unattended upon the street and allowing it to run away when he is instructed not to leave it; leaving obstructions on stairways in office buildings, stores or apartments, improperly operating an elevator, are instances of the kinds of negligence on the part of servants for which an employer would be held liable.

WHEN INCOMPETENTS ARE EMPLOYED

It will be readily appreciated that if an employer employs incompetent servants, or if he fails to give them proper instructions in regard to the prosecution of the work, or fails to exercise proper supervision over their actions, he would be liable for any negligent act performed by them in the course of their duties. The law, however, does not compel an employer to pay for every kind of accident which his employees may cause to other persons or their property. The law draws certain distinctions which it is necessary for us to recognize in order to have a correct knowledge of how far the responsibility of a master extends.

DEFINITION OF SERVANT

The first test which must be applied in every case of accident, where it appears that the person who caused the injury was acting for another, is whether the relationship of master and servant existed between them at the time of the occurrence. Any person doing some act in the interest of another and acting

under the control or direction of another, is a servant or agent. It is the relationship between the two persons which the law describes by the terms of master and servant, and to which this branch of law applies. There need be no actual contract of employment, nor payment for services. A person who volunteers to do a piece of work for another, and if his offer is accepted, would stand in the relationship of servant to master, should injury to a third party result from his actions. Where one person selects another, can discharge him, can order him as to the work to be done, then the relationship clearly exists.

The difficulties and disputes which give rise to litigation occur when there is a question as to whether the relationship of master and servant in reality existed; whether or not the alleged servant was an independent contractor; and whether the act of the servant was within the scope of his authority or employment.

INDEPENDENT CONTRACTOR

The relationship of master and servant does not exist where an independent contractor is concerned. An independent contractor is one who is engaged to do certain work according to his own methods and is not subject to the control of the employer or the contractee. There is little difficulty in those cases where accidents are caused by a person or corporation carrying on an entirely independent business, such as the employment of shipbuilders to build a ship; or a contractor to build a house. The difficulty arises where a mere service is to be performed such as hiring a man to mow a lawn, plow a field, drive a carriage. Such a man may do work for several people, as is often the case. The test of whether the relationship is that of employer and servant or merely employer and independent contractor is the right of the employer to control or interfere with the actions of the other person. When an accident happens as the result of any kind of operation, the injured party will make claim upon any person whom he can hold or has any chance to hold if the person who caused the injury was doing work for another.

INDEPENDENT CONTRACTOR LIABLE

If an employee or contractee should reserve the right to supervise work to see that it is done in accordance with the contract this will not necessarily make him liable. Liability depends not upon whether he retains the right merely to see that the results are according to contract, but whether he can go further than that and interfere in the means and methods pursued by the contractor. It has been held that where the work was to be done under the supervision and subject to the approval of the employer, the latter was not liable; nor where the work

was to be done under the supervision of the employer's engineer, or to be done to the satisfaction of the employer's representative.

The owner of a wagon who is hired to deliver the hired's product would not be the servant of the hirer, but an independent contractor.

If a painting concern were employed to paint the outside wall of a building, and one of their employees allowed a pot of paint to fall upon a passer-by, the liability would be on the painting concern.

Owners of property in a city owe no duty to the pubic for obstructions left upon the street by independent contractors.

INDEPENDENT CONTRACTORS NOT LIABLE

A written contract was made with certain people to wreck a building. The contract required the work to be done according to the directions of the employer's own architect, whose decisions on all points would be final. It was held that such control prevented the contractor from being independent and created the relation of master and servant between the two. A contractor was employed to build a walk as the employer required, and to submit to the supervision and control of the employer's engineer. It was held he was not an independent contractor.

Some persons or corporations in making contracts are excessively careful in retaining supervision and even control over the contractor's work, but they overlook the fact that interference with and control over the methods employed by the contractor may bring a responsibility for accidents which had not occurred to them. The terms of any written contract are material, and if persons about to enter into a contract could be induced to consult a casualty insurance man before execution, they would receive advice which would be of value to them.

The employees of a coal company who delivered coal at certain premises through a coal hole in the sidewalk, went away leaving the coal hole cover unfastened and a member of the public later fell into the hole and was injured. The coal people were independent contractors, but as the owner of the property owed a duty to the public to keep it safely closed and covered, he was held liable.

DUTY IMPOSED BY STATUTE

If a duty is imposed upon an owner by statute or ordinance to protect persons against injury he cannot evade liability although he employs an independent contractor. An ordinance which provides that the owner must erect roofed passageway over the sidewalk as soon as his building in course of construc-

tion has reached the first story, throws liability directly upon the owner for this omission by a contractor.

Where an accident was due to defective plans furnished by the owner or employer to the contractor, the employer was held liable. The employer, however, may escape liability if he shows that the plans were prepared by a skillful architect. Where work which is inherently dangerous has to be done, such as the pulling down of a wall of a building destroyed by fire, the law does not permit the employer to escape liability for the contractor's negligence. Where there is great danger of accident to third parties, the employer or owner must take unusual precautions.

The owner or employer would be liable in addition to the contractor for any accident on such work as excavations adjacent to or made upon the streets of a city. Such operations as the erection of a telephone pole; digging a cellar in a building; even the raising of a party wall, when the work is done by independent contractors, would not, however, be dangerous within the meaning of this rule.

WHEN THE CONTRACTOR RELIEVES LIABILITY

It will be found in many contracts that the contractor is obligated to relieve the owner of liability for accidents but this is simply an agreement between the two parties which would not affect the direct liability of the owner to a third party if he could be held responsible. A storekeeper who reconstructs his premises and still continues to carry on business would not escape liability for accidents to persons properly on the premises, caused by the constructor's negligence. When the contractee has accepted the work from the contractor, after completion, the contractee would thereafter be liable for any defect or dangerous condition. Difficult cases arise where the contractee takes possession of new premises before completion.

Where a contractee or owner furnishes appliances to a contractor to work with, the former would be liable for any accident due to defect in these appliances, especially if he undertook to furnish them by agreement with the contractor. Liability, however, will always depend upon the facts and circumstances, but frequent controversies arise in such cases and the owner has great difficulty in escaping liability.

PRINCIPAL AND SUB-CONTRACTORS

In determining whether a sub-contractor is an independent contractor in any questions as between the two parties, the same rules of law apply. Sometimes contracts are made between an original contractor and a sub-contractor which are

not executed in good faith but done with the intention of hiding the real relation between the parties. The conduct of the parties will usually reveal the truth.

The original contractor may be liable with a sub-contractor for the negligent act of the latter because the omission or act resulted from their joint actions. In the construction of buildings a statute or ordinance may require that counterfloors be placed below the workmen so as to protect other workmen engaged underneath; for instance, a workman of a tile contractor who is a sub-contractor on a building may drop a piece of tile on the workman of another sub-contractor working lower down. It is the duty of the original contractor to place counterfloors so as to prevent articles from falling upon workmen underneath. The original contractor would be held liable for a breach of the ordinance and the sub-contractor would be held liable for the negligent act of his workman.

A contractor would be held liable for the negligence of a sub-contractor if he knew or ought to have known that the latter had a reputation for negligent work.

ACTIONS BY SERVANTS

Sometimes an employee employs another person to assist him on a particular piece of work for his master. There would arise a question as to whether that act was within the scope of his employment. An employee who is unable to crank an automobile might call for assistance from a passer-by, and the latter might start the car in motion, causing it to run away, or an employee might ask a passer-by to help him to unload a wagon, and the latter might cause an accident to a third party through inexperience. How would the master stand in these cases? The rule of law is that the master is liable for the negligence of persons hired by his employees, or who assist his servants at their request, if the servant had authority, express or implied, to ask for assistance from other parties.

The authority would be implied if the master knew that the servant would require help, or that the servant had in similar instances obtained help and the master had given no instructions to the contrary. Where a servant of an oil company was engaged to sell and distribute oil on commission, and engaged others to assist him in these operations, the master was held liable for the negligent act of an assistant.

EMPLOYER LIABLE FOR SERVANT'S ACTS

A master's responsibility for the negligence of his servant does not extend to cases where the servant has stepped outside the scope of his employment and committed an act which resulted in injury or damage to another person. Before an em-

ployer can avoid responsibility it must be clearly shown that the servant's act was unauthorized and entirely outside of the line of his duties. When an accident occurs on the employer's premises, or while the employee is in the service of the employer, the party injured or aggrieved seeks to place responsibility at the door of the master. A storekeeper was held liable for an injury caused by a servant to a customer in a store when the injury was caused by employees playfully throwing objects around with the result that one of these objects accidentally injured the customer.

It seems a hard rule of law that the owner of premises should be responsible for the negligence of his employees while playing together or engaged in horseplay. Customers who are invited into a store are entitled to safe protection while they are on the owner's premises, and the law requires him to use such supervision and control over his employees that they will not cause injury to the customer while upon the premises.

Railway companies have been held liable for damages for assault by conductors upon passengers, on the ground that they owed an actual duty to the passengers, to exercise the utmost care in their safety and to see that their employees do not abuse their privileges.

A doorkeeper or janitor might, under the sting of provoking remarks made by another person, seize hold of him and cause him bodily injuries. The law will not tolerate such actions on the part of employees who are placed by the employer for the purpose of protecting his interest if they use unnecessary violence in the performance of their duties.

EMPLOYER HELD NOT LIABLE

If an employee cause injury to another person in order to gratify his personal spite or some other purpose of his own, the employer would not, in general, be liable.

Difficult questions of responsibility arise where the employee, while in his master's employ and in his master's time, steps outside of his duties to do something on his own account and for his own benefit. Many employees use their employer's teams or automobiles for their own personal purposes, and it is an important question as to whether the law recognizes responsibility for an accident which occurs when the employee is engaged in serving his own ends. Employers very frequently overlook the fact that they may at least be sued for damages for every act of their employees, and may have the trouble and expense of proving to the satisfaction of a jury that the employee's act was entirely for his own purpose. The decisions have varied in different States, and even within States,

but there are some cases which give a general guide on the subject.

In Illinois a master was held not liable for injuries to a child caused by the driver of a wagon who made a divergence from the regular route to his master's place of business in order to visit his own home. A slight deviation by a driver from the regular route was held in New York State not to constitute a turning aside from pursuing the employer's business. An employee in charge of a horse and team, which he left unattended while he visited a sick friend, diverged only two blocks from the regular route, and the employer was held liable. On the other hand, a driver of a team, who ran over a person while entirely away from his proper course and engaged in delivering a trunk not connected with his employer's business, was doing something outside the scope of his employment, and the master was relieved of liability.

DIVERGENCE FROM MASTER'S WORK

What happens when the employee proceeds to return to the performance of his master's work after making the divergence? Even that question has received the attention of the courts, and it has been held that the master's responsibility for his servant who has diverged from his proper course, re-attaches as soon as his servant resumes the prosecution of his master's business by starting to return. Sometimes an employee out of the kindness of his heart, or in order to perform a personal service to another person, invites a person to come on his employer's premises or to ride in his employer's wagon or automobile and an accident happens.

An employee in a printing establishment invited a friend to call upon him at his employer's place of business, which he did, and on leaving the friend asked the employee to direct him to the quickest way out of the premises. The employee is said to have pointed in the direction of a door which led into an open elevator shaft. The visitor in question opened the door, and on account of the darkness omitted to see the opening and fell down and was injured. The employer was not held liable in that case because the master owed him no duty.

ACTS OF SERVANTS TEMPORARILY EMPLOYED

A person in the regular employ of one master might be temporarily loaned to another employer and, while engaged for the latter, cause an accident to a member of the public. The original employer would not be liable—the liability would be on the empoyer for whom he was working at the time of the accident. A factory owner asked another for the loan of a certain employee in an emergency on account of his skill and

special knowledge, and the request was granted with the result that there became a temporary hiring of the mechanic to the other employer, although no arrangement had been made in regard to remuneration. The mechanic caused an accident, and as it was found that he was acting under the full control and direction of the second employer the latter was held liable for the accident. On the other hand, if he had continued subject to the full control and direction of his original employer, as is often the case with employees sent to instruct a purchaser of machinery or to demonstrate its qualities, the original employer would be liable.

The question of liability in every case depends upon the facts. It was held in the case of a company engaged in the sale of fireworks, and who, on request, agreed to furnish employees to fire them, that the agreement between the parties made the employees, for the time being, employees of the exhibition company, and the latter were liable for the accident which occurred. The owner of a steam roller was held liable for his engineer's negligence in failing to warn travelers of the danger of escaping steam where the roller had been hired by the day to a municipality for use upon its streets and its officials directed where the work should be done, because the owner of the roller was still in control of the engineer and alone could discharge.

HIRERS OF TEAMS AND AUTOMOBILES

A livery stable keeper who furnishes a horse and driver for a special trip or purpose would be liable for injuries caused by the horse or driver. If, however, actual control of the driver was placed under the hirer, the latter would be liable. Even if the hirer were to give the driver gratuities or to furnish him with a uniform, the hirer would not be held liable by reason of these acts alone. Nor would the hirer of a taxicab be liable if he told a driver to hurry and pass another taxicab ahead with the result that an accident happened.

The name and address of a person or firm who hire a wagon or automobile from another are oftentimes painted on the wagon or automobile, with the consent of the owner, with the result that the public are led to believe that the wagon or automobile belongs to the person whose name is printed upon it. While this would be very significant, it would not necessarily mean that the hirer had authority over the driver so as to make him responsible for the driver's negligence. The hirer's liability would depend upon the actual facts.

A man may own a horse and carriage and keep them at a livery stable but may not have a driver in his own employ. He may ask the livery man to furnish him with a driver whenever he wants to use the horse and carriage. The livery man would be

responsible for any accidents caused through the driver's negligence, but if the accident was caused by the vicious propensities of the horse, which was not owned by the livery man, the owner would be liable. It is safe to say that both owner and livery man would be sued, and both ought to have protection by insurance.

WHERE SERVANT WORKS FOR SEVERAL

In the ordinary case a servant has only one master, but it is not unusual for a servant to be employed by two or more persons carrying on separate businesses, and all of whom contribute to his wages. A janitor or superintendent of an apartment house might work for several owners at one time. The rule of law is that the master for whom he was working at the time of an accident is responsible for his negligence.

LIABILITY OF OWNERS AND OCCUPIERS

Law Concerning Trespassers—Doctrine of Attractive Nuisance —Liability of Owners to Licensees—Guests in Automobiles—Contributory Negligence

By W. G. Falconer, President Norwich Union Indemnity Co.

A review of the law of negligence would be incomplete without making reference to the liability of owners and occupiers of property, to persons who are injured upon their premises. A person walks into a factory, a store, an office, a theatre, a yard, a vacant lot, and is injured, what is the liability, if any, which an owner or occupier incurs?

Persons who are upon property owned or occupied by another person are divided into three classes: (1) Trespassers, (2) Licensees, (3) Invitees.

It is necessary to determine the legal status of any person who may be injured on property, in order to ascertain the nature of the owner's liability.

LAW CONCERNING TRESPASSERS

This branch of the law of negligence refers to the question of how far, if at all, an owner or occupier of premises is liable in damages to persons who may happen to be injured on his premises when they had no right or permission to be there. The record of court decisions and the claim files of casualty companies demonstrate that claims by trespassers are very numerous and often troublesome to deal with. Many owners of premises overlook the possibility of claims being upon them by trespassers and for this reason public liability insurance is not as widely written as it should be. An agent or broker is too often turned aside by the statement of the owner, that no member of the public ever gets into his premises, or if he does, it is his own fault.

LIABILITY TO TRESPASSERS

Although the general rule is that the owner owes no duty to safeguard a trespasser, except that he must not wilfully injure him, a reference to a number of cases where liability was imposed upon an owner or occupier is of interest.

An unguarded excavation on private property so near a public road that one inadvertently trespassing on the owner's property fell into it, was sufficient to hold the owner liable to the injured person, notwithstanding that the excavation was made by an independent contractor,

Children are the most frequent trespassers. Although the established rule is that an owner owes no greater duty to a child of tender years, who is a trespasser, than to an older person, yet there are exceptions to that rule.

In the case of machinery or places attractive to children, even though the children be technically trespassers, an owner of premises ought to exercise judgment and prudence so that young persons may not be naturally attracted by unsuspected danger. In some States this exception is not recognized, but in general the exception stands.

ATTRACTIVE NUISANCE

This view of the law is commonly known as the doctrine of attractive nuisance. Originally, it was applied to turn tables owned by the railroad companies. Children were in the habit of playing on turn tables and quite frequently a child would be hurt and a suit would ensue. The courts held that the railroad company, knowing that a turn table was attractive to children, must execute that degree of care commensurate with the danger and were compelled frequently to pay heavy damages. This doctrine was referred to as the turn tables doctrine and gradually its application spread until the law held that if an owner of property has any object, contrivance or materials which children are in the custom of playing about—attractive to children—then the owner must take reasonable care in view of the circumstances, to see that children are not permitted to play around the particular thing in question, and if the owner fails to take reasonable care to avoid injuries to children so playing, the owner is liable.

An owner of land was held liable for injuries to a child which were sustained by the chid climbing on a rock and touching an electric wire belonging to the owner which had been negligently left hanging down so that the child could reach it. The owner knew that neighboring children frequently played around the rock, did not forbid their presence, and left the electric wire hanging without repairing it.

Parallel to this case, was a recent case in the New York Courts. A young boy climbed an elevator pillar and in so doing, up near the top of the pillar, his hands came in contact with an electric wire and as the result, the boy lost one of his arms. The court held that the railroad company was liable on the basis of the doctrine of attractive nuisance. It was shown upon the trial that boys were in the habit of playing around elevated pillars and climbing thereon, and although the railroad company showed that it had attempted at times to keep away the boys, the question of negligence was submitted to the Jury and the boy received very substantial damages.

An owner was held liable to a boy who went into a newspaper office to look for a job folding newspapers. The boy began playing with an elevator and received injuries. The employer knew that boys often hung around expecting to be employed. There was an invitation to boys to come on the premises.

WHERE OWNER WAS HELD NOT LIABLE

Where a person went on an owner's premises which had been burned by fire to look for things among the ruins and was injured, the owner was held not liable. If a person goes into premises out of curiosity for his own convenience, without invitation express or implied, without any business there, he is a trespasser. A person, who has had a license to use certain property, is a trespasser after the license has terminated.

In a case where a child fell off the ladder at the lower end of a fire escape, the owner was held not liable. An owner of premises was held not liable to a child who was invited on the premises by his brother who was employed in the factory. The child had been ordered off the premises and did not leave, and sustained injury.

As distinct from the class of persons known in Law as Trespassers, there is another class known as Licensees.

LIABILITY OF OWNERS TO LICENSEES

The liability of an owner or occupant of premises in the event of an accident occurring on his premises, to a licensee, rests upon the question as to whether the licensee came upon the premises for his own purposes or on the invitation, express or implied, of the owner or occupier.

A licensee is one who is permitted to come upon the owner's premises for his own convenience or pleasure. He differs from a trespasser because he may have permission from the owner or occupier. He differs from a passenger in a vehicle or a servant because there is no contractual relationship between him and the owner. One who enters premises as a visitor, or to transact some business with one of the owner's employees in which the owner has no interest, is a licensee. One who enters a hotel to take shelter from a thunder storm and meets with an injury in the hotel is a licensee and the owner owes no duty to him. A person walking over an open lot, goes at his own risk, as a general rule. If a person who is invited to come on to an owner's premises, such as the office of a factory, goes beyond the invitation and wanders all over the factory and receives injury, the owner is not liable.

HELD LIABLE TO LICENSEE

An invitation expressed or implied to a licensee by the owner or occupant of premises to come upon them, imposes a duty on the owner or occupant to use ordinary care to keep his premises in safe condition. If there is a defect in the premises, such persons can recover damages for injury. A porter took a member of the public who had called at a warehouse, through a dark passageway and said they would take the elevator. In the dark the visitor misunderstood the directions and fell down the shaft receiving injuries. It was held that the owner was liable under the circumstances.

Where an owner constructs a walk on his property which leads from one street to another and gives the impression that it is a public street, he is bound to keep it in safe condition for any person who may use it.

Where a person making use of some other person's property can point to some act of the owner or his servant which gives a reasonable basis for the belief that he may make use of the premises, the owner owes a duty to see that no injury occurs through his negligent act. An invitation to enter premises would exist if some benefit accrued to the owner as the reason for the visitor's presence. Even friendship for the owner would be a good enough reason.

If a person went to a factory to get an article intended to be taken by another person, there would be implied invitation to that person to come on the premises.

PERSONS IN STORES AND PUBLIC PLACES

An invitee is a person who is on the property of another by virtue of an express or implied invitation. The limitations of an implied invitation are to be determined in most cases by custom. To such a person the owner, or occupier is under a duty to use reasonable care.

A customer who comes into a store or other place of business is there on the implied invitation of the owner. So also is a person attending public places of amusement, as well as prospective tenants and purchasers of property and persons who accompany them. Likewise, persons entering on premises to perform work there, although not in the owner's employ, *e. g.*, railroad employees who run cars into a railway siding on the owner's property; persons seeking employment on owner's invitation according to recognized custom, and persons who go into premises in the line of their duty such as policemen or government employees.

An owner was held liable for injuries to a policeman who entered on the premises at night time when he found the doors open. In the dark he fell down the shaft of the elevator which

was left without a railing as required by statute. The policeman entered in the line of duty. In the case of stores, the owner owes a duty to his customers to protect them even if they should enter or leave the store by a way which the owner never intended them to use. A customer is not entitled to roam all over the place and the owner is not bound to keep every part of his store in safe condition, but he must keep that part safe where it may be expected customers would be likely to go. A department store which keeps a room where children may play while their parents do their shopping, must keep the room in reasonably safe condition so that children may not be injured.

GUESTS IN AUTOMOBILES

The owner of an automobile owes a duty to guests whom he invites to ride with him in his car. Numerous cases have found their way into the courts within the last few years and casualty companies have had to deal with a very large number of claims from guests. Sometimes, these guests are merely friends and sometimes they are relatives.

A case occurred recently in Buffalo where the owner of an automobile invited some people to accompany him on a ride, and losing his way on a country road in the dark, he stopped his car alongside another automobile which was at a standstill in order to ask the driver the proper direction. Both cars, while in this position, were occupying all the road and another car coming in the opposite direction, collided with car number one injuring the occupants of car number one. Suits were brought by the occupants or guests, not against the owner of the car which ran into them because he was penniless, but against the owner of the car who had invited them to ride.

It was a question for the jury whether the owner of car number one was negligent in stopping his car in the middle of the road on a dark night.

In another case, the owner of a car, while driving along the street was stopped by a man and asked to give him a lift. The owner agreed to this and a little later on at an intersection a collision occurred with another car. The man to whom a lift had been given received injuries in the collision and brought suit against the owner of the car in which he had been an occupant. As a rule, the injured occupant of an automobile brings suit against the owners of both cars in the case of collisions. The question of the owner's liability in this case depended upon whether he was negligently driving the car. The owner of the car was held liable to the occupant although he had merely permitted him to come upon his car for his own comfort and convenience.

In California, there is pending a case where a wife is suing her husband as well as the owner of another car for personal injuries received while she was riding in her husband's automobile. The husband was driving the car and the collision occurred at the intersection of two streets. In a right angle collision, it is frequently difficult to determine on which automobile owner the liability rests. Both owners may have contributed by their negligence to the accident, but as the wife was not operating the car no contributory negligence can be imputed to her. What is her legal status insofar as her husband is concerned in this accident? Was she a licensee or an invitee? As the case has not yet been tried it is difficult to say what the jury may do, but the probabilities are that the wife will get a judgment against her husband and the owner of the other car.

In another case in Syracuse, the owner of an automobile consented to drive three friends, at their suggestion, to another town, and while driving along the road something went wrong with the steering wheel which caused the car to overturn, killing one of the occupants. Suit was brought by a widow and she obtained a judgment against the owner of the automobile because the car was defective and was probably being driven too fast under the circumstances.

CONTRIBUTORY NEGLIGENCE

The defenses which are made use of by a defendant in a claim against him for damages for personal injury to another person are that the accident was caused by (1) the sole negligence of the plaintiff, (2) the plaintiff's negligence contributed to the accident, or (3) unavoidable accident.

Every public liability claim reported to a casualty company is scrutinized with these possible defenses in view. If the facts reveal that there was contributory negligence on the injured person's part, how far does his negligence relieve the person who caused the accident of responsibility? The want of ordinary care which constitutes contributory negligence on the part of the plaintiff, depends entirely upon the facts in each case, and in the event of a jury trial, the court will leave the answer to the question to the discretion of the jury. There is a rule in every suit for damages for personal injuries that questions of fact are for the jury, and contributory negligence being one of fact is left to the jury. Inasmuch as the sympathies of a jury are usually with the injured party, it is frequently difficult to obtain a decision from a jury on this point in favor of the defendant. Contributory negligence as a defense nowadays seems only to hold down damages.

A defendant endeavors to prove contributory negligence on the part of the injured person by showing, among other probable

causes, that he knew of the danger and could have avoided it, or that the danger was plain to any person of ordinary intelligence, or that the injured person failed, through lack of care, to see the danger. A man was hurt by a wooden board being blown by the wind from defendant's pile. The accident occurred at a season of the year when high winds were not uncommon. The wood on the lumber pile was unfastened. The injured man was warned that if he traveled along the side of the street adjacent to the pile he was liable to be struck by flying boards. After a little delay he pulled his coat over his head and while walking away was struck. The owner of the lumber pile was sued, and the question of contributory negligence was left to the jury. The jury gave a verdict for the injured man. In another case a person was walking along the street carrying a basket and accidentally fell into an unguarded hole. It was shown that the injured person knew of the existence of the unguarded hole before the accident. Was this contributory negligence? The question was submitted to the jury, but the defense did not prevail. Temporary forgetfulness of a known danger excused the plaintiff in this case.

EMERGENCY RISK

Sometimes an accident is caused to another who has risked his life in an emergency. A man, seeing a child on a railroad track and a train swiftly approaching, made an effort to save it, but in doing so lost his own life. Was this contributory negligence? The railroad company was sued and contended that voluntary exposure to save life is contributory negligence. The question was submitted to the jury, who held that it was not.

In the case of a child, the question of contributory negligence depends upon the child's knowledge, age, mental capacity and experience, and upon the character of the danger to which he is exposed. Children up to seven years, as a matter of law, are incapable of being guilty of contributory negligence, but after that age they are.

If a very young child is injured, is the contributory negligence of the parents an answer? The question is one for the jury in practically every case.

In the case of an intoxicated person, proof of intoxication is not conclusive of contributory negligence. The question as to whether it contributed to produce the injury is for the jury.

There would be no contributory negligence on the occupant of a car who had nothing to do with its operation and was not the cause of the accident.

PROTECTING THE MOTOR CAR

Study of Automobile Insurance—Scope of Policy Form—Travel and Traffic Laws—Growth of Automobile Industry—Underwriting Considerations

By M. E. Jewett, Vice-President, Royal Indemnity Co.

Those of you who have been in attendance here during the past few weeks have heard discussed the general subject of public liability insurance; that subject having been treated in four parts.

The subject which we now have for discussion is automobile insurance from a liability insurance standpoint. The subject has been assigned to us in four parts, as was the case with the public liability. The four subjects which will be discussed under this general heading of automobiles, will be, first: Personal Injury, general considerations out of the study of liability insurance; second, Property Damage; third, Collision; fourth, Forms of coverage and rating principles.

It is apparent from the subdivisions noted that the first one is general in its character and should, in my opinion, not involve us in technical discussions which naturally will arise under the succeeding subjects. We are accordingly interested today only in personal injury, as it would have a bearing upon the writing of automobile liability insurance; and the rather broad subject suggested by our assignment of "general considerations arising out of the study of automobile insurance."

DANGERS IN AUTOMOBILE OPERATION

In taking up this question for consideration, we are immediately impressed with the dangers which must necessarily be involved in the operation of an automobile. A machine, the utility of which necessitates its operation upon our streets and highways, where the rights of pedestrians in the uses of the same streets and highways are conceded, creates a condition involving great dangers to life and limb.

While a similar condition existed to a degree in the days of exclusively horse-drawn vehicles, the introduction of automobile created an exceedingly more dangerous situation, and during the continued and rapid growth of the automobile industry this situation has become more dangerous, notwithstanding earnest and constant attention at the hands of public authorities and others interested in the safety of our streets.

EXTENSION TO AUTOMOBILE

Public liability insurance covering the operation of teams or horse-drawn vehicles had been written for a number of years previous to the introduction of the automobile. It is accordingly easily understandable how readily the liability underwriter embraced the opportunity to extend the liability contract to include the new and more dangerous vehicle. Especially is this so when it is realized that the use of the automobile brought with it increased responsibility to the owner or operator and an appreciation of the greatly increased likelihood of claims for damages for personal injury, due to the more frequent accidents.

The underwriter in entering this new field realized not only the great danger to pedestrians, but it was apparent that any mishap which might cause injury to a pedestrian would easily involve the occupants of the automobile itself. It was also evident that any accident where two or more automobiles were involved could very easily cause injury to the occupants of all the cars concerned. The most superficial consideration of the subject indicated that the operation of an automobile was of concern not only to pedestrians, but to the occupants of automobiles and other vehicles as well.

INTEREST OF UNDERWRITER

Accordingly, the underwriter was primarily interested in personal injuries which might be caused by the operation of an automobile but it was apparent that injuries might also occur which were not caused directly by the operation of the automobile, but were caused by other circumstances incident to the care and up-keep, repair or general handling of the car. For this reason, the contract of insurance was so drawn as to not only include injuries caused by operation, but also to provide coverage for all injuries caused by cars, maintenance or use. Under these general terms we accordingly make provision for all injuries sustained by reason of the ownership of an automobile.

There are some exceptions however. While the record of injuries to owner-drivers of automobiles would doubtless show the serious risk which most of us apparently assume with great cheerfulness we are not at the moment interested in insurance of owners; these injuries being more of interest to the personal accident underwriter than to the underwriter in the liability branch of our business. The nature of our contract being a covenant to indemnify, necessarily excludes any payment for personal injury to the owner of the car, or as the case may be, the operator of the car.

Neither are we interested in the personal injuries of employes of the owner, for such protection is provided either

by workmen's compensation insurance, or employer's liability coverage.

Our survey accordingly presents to us a field for insurance of all those injuries sustained by any person or persons, other than the owner or operator of the automobile insured or in his employ. For purposes of brevity and in the parlance of our business we designate this class as "public," and the individual person in this class as a "member of the public" and our insurance policy contract as "automobile public."

SCOPE OF POLICY FORM

While it is not my intention to deal with policy forms at this time, it is pertinent to point out that the insurance contract undertakes to assume the legal responsibility of the owner or operator of an automobile for all those injuries to the public which he may cause by reason of his ownership of such automobile. The insurance carrier specifically agreeing with the insured that if any person or persons shall sustain bodily injury by accident whether resulting fatally or otherwise by reason of the ownership, maintenance or uses of the automobile insured, then the carrier will indemnify the insured within the certain limits of insurance, as provided by the contract.

The occasion for such a contract arises out of the fact that certain obligations rest upon the operator of an automobile, which obligations are imposed upon him by law and only under certain legal restrictions is the operation of an automobile permitted. Our insurance contract accordingly undertakes to assume these certain obligations inasmuch as infractions or violation of these various laws may be followed by penalties in the way of money damages, where personal injury has resulted: provided, of course, negligent acts of the owner or operator are shown to have caused the injury.

TRAVEL AND TRAFFIC LAWS

The general use of the automobile has brought forth a multiplicity of these laws designed to regulate travel and traffic in our streets and upon our highways. Up to this time it is to be regretted, however, that there has not been a standard or universal law adopted in all sections of the country. While there does not exist a general similarity in most of these laws, there are still many differences and inconsistencies. The driver of an automobile might operate in entire accordance with the law of one state, while he might be subject to fine or imprisonment for the violation of some condition of the laws of another state, notwithstanding the fact that he may have conducted himself in the same manner in both states. Most of these laws, however, deal with a few fundamentals, and generally

speaking, the automobile owner who familiarizes himself with the requirements as respects these few fundamentals, will be relieved of such embarrassment. While these laws deal specifically and in detail with such questions as signals, speed, right of way, lights and many other subjects—a few of the principal requirements are easily learned and are of interest and importance and directly concern us as influencing the control of automobile traffic. While great benefit has accrued from these laws, the enforcement of many of them has not been stringent and much laxity and carelessness is still permitted in most cities; with the result that daily some of our citizens are being run down by automobiles in the hands of careless and irresponsible drivers. We are, accordingly, vitally interested in the perfection of traffic regulations, the enforcement of strict adherence to legal and ordinance requirements, and the general efforts to eliminate the dangers of automobile traffic.

The great growth of the automobile industry, the constantly increasing number of vehicles upon our streets and highways make necessary increasingly more stringent regulations.

TRAFFIC REQUIREMENTS

A few of the more important requirements of our present laws might be referred to with profit. Among which such provisions as the following are generally found.

1. The driver or operator of a vehicle approaching an intersection of any streets shall yield the right of way to a vehicle approaching such intersection from the right of such first named vehicle.

In our City of New York, however, we have an exception to this general requirement inasmuch as the right of way here is granted to the traffic flowing north and south. In Cleveland, the right of way is accorded to the traffic using the boulevards of that City.

2. Every person operating or driving a motor car or other vehicle shall operate or drive the same in a careful and prudent manner at a rate of speed not greater than is reasonable and proper, having regard to the traffic and use of said street, and no person shall operate or drive a motor or other vehicle on any street at such rate of speed as to endanger the life or limb of any person or the safety of any property.

In many states there is substituted for this wording a definite permitted speed at which it shall be legal to drive.

3. The driver or operator of any vehicle shall, in overtaking and passing any other vehicle, proceeding in the same direction, pass to the left thereof and shall not again drive to the right until reasonably clear of such overtaken vehicle.

4. The driver or operator of any vehicle in or upon any street shall travel upon the right half of such street.

5. It shall be the duty of the driver or operator of the vehicle about to be overtaken and passed to give way to the right in favor of the overtaking vehicle, on suitable and audible signal being given by or on behalf of the operator, driver or other person in charge and control of such overtaking vehicle.

6. The drivers or operators of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other, one-half of the street as nearly as possible.

7. The driver or operator of any vehicle in or upon any street, in passing any railroad, interurban or street car, while passengers are alighting from or boarding same, shall drive such vehicle on the right hand side of such railroad, interurban or street car, and shall drive in a careful and prudent manner and shall so operate and drive said vehicle that no portion thereof of any load thereon shall be within 8 feet of the running board or step of such car and shall at all times operate the same with due care and caution so that the safety of such passengers shall be assured.

FURTHER REGULATIONS

In New York and in many other cities, this requirement is made more stringent by compelling the operator of a car to come to a stop in approaching street cars discharging or taking on passengers.

The requirements for registration and licensing vary in all the States. All, however, provide penalties and punishments designed to control those engaged in the operation of automobiles.

Various other provisions are made similar to the above, for the control of traffic, all with the underlying thought of safegarding the public as much as may be possible while still permitting the free use of the automobile. Few of us probably have taken the trouble to acquaint ourselves with these motor vehicle laws, and it is probably too much to expect that automobile owners generally will have a minute knowledge of all of them, but it is advisable that we become familiar with the fundamentals, in order that we may govern ourselves circumspectly and avoid trouble and expense and possible injury to others.

While the enactments of these controlling laws has followed the introduction of the automobile it is to be regretted, that legislation has not kept pace with the developments. While efforts have continuously been made to restrict and control the operation of automobiles, the thousands of fatalities, and the tens of thousands of accidents indicate the futility of the control up to this time. The phenomenal growth of the automobile industry, claimed by some to rank as the most important in-

dustrial development of the twentieth century has created many problems for the automobile liability underwriter.

GROWTH OF AUTOMOBILE INDUSTRY

The industry itself was in its infancy in 1900. The total production of American manufacturers for that year being only 3,700 passenger cars and 411 commercial vehicles. The enormous expansion of the industry is shown by the fact that there are now 9,245,195 cars registered in the United States. From this registration the states collected $108,213,165 revenue for the first half of the present year. It is estimated that there is at the present time approximately one automobile to every twelve persons. One of the greatest authorities upon automobile manufacturing, conservatively estimates that the number of motor vehicles in use in the United States will be increased during the next ten years to 15,000,000.

This rapid increase in production raises a most important question for the automobile underwriter. Its influence upon losses is at once apparent, and with the constantly increasing production, it is evident that there must come a time when our streets cannot accommodate the increasing number of cars. The automobile manufacturer himself is concerned with a similar problem, that problem being the number of cars which it is possible for our 110,000,000 population to assimilate. Some of the optimists in the business predict that 20,000,000 cars will be in service within the next few years; some of the more conservative say that only a slight increase over the present number will bring us to the saturation point. A moderate estimate places the number at approximately 12,000,000 cars.

This great expansion of the industry is disturbing to us, from the standpoint of increasing hazards. We appreciate that the streets and roads are, generally speaking, no wider than they were a few years ago, and one of the great traffic problems confronting the cities today is to relieve the congestion caused by over-crowding. Steps in some parts of the country have been taken to relieve this to some extent by the widening of streets, opening of new streets, eliminating curves and dangerous crossings, erecting traffic signals and signs of various characters and increasing the restrictions for automobile operation.

MORE STREET SPACE NEEDED

In this connection we have a very interesting example here in New York City, at the present time, in the case of Madison Avenue. The City has just reclaimed, all land belonging to it on Madison Avenue, from 42nd to 61st Streets. It is intended later to widen this same Avenue north of 61st Street. The necessity for this is the requirement for extra space on

Sixth Avenue between 42nd and 61st Streets, in order that that street may be used as an auxilliary to Fifth Avenue. Years ago when the cities had not so many people and before the days of automobiles, property owners infringed upon the city land. It was the common practice to have steps, area-ways and store windows and other structures placed beyond the property or building-line.

Had not the automobile become so popular, the trespassing would probably not have been noticed. Under the necessity, however, of accommodating the increased traffic, our attention is being given to the widening of streets and in this manner to an extent at least affording some relief. It is also proposed to eliminate the "parking" which now beautifies the center of Park Avenue, from 34th Street to the Grand Central Station. Another proposal for relief contemplates an underground parking space beneath Bryant Park. These are only a few of the attempts to lessen the city's traffic burdens.

INCREASING CONGESTION

The direct bearing upon the writing of automobile insurance, due to this increased congestion may be more readily appreciated by a concrete example. It is noted that in our own State of New York, there was registered 682,894 automobiles for the year 1920; for the year 1921 this number had increased to 783,000. Interpreting these figures we are confronted with this situation. On the streets and highways in the state of New York we now have moving about 100,000 more automobiles than a year ago. The streets have not enlarged to any extent, while the population has increased to a normal degree. Fifteen per cent increase in traffic density accompanied by the normal increase in population density during the same period.

Another feature which is worthy of comment is the fact that during this increase in the number of registered automobiles, there is injected into this dangerous congestion, a large number of inexperienced drivers who are undertaking for their first time the operation of an automobile. This inexperienced operation creates an added hazard which must each year be assumed by the companies and absorbed in our rates.

The consequences of this increasing congestion may be realized when it is noted that during the year 1920 automobiles were responsible for 9,103 deaths in the United States, as compared with 7,908 during the year 1919. Reference to previous years indicates approximately the same ratio of increase from year to year.

NEED TO LESSEN ACCIDENTS

Fixing our attention on this rapidly increasing number of fatalities, we are impressed with the imperative necessity of

greater and continued effort to lessen the accidents due to the motor car. If fatalties keep up their present rate of increase, the automobile will soon head the list as the most dangerous instrument in the hands of our people. The lengthening list of victims tells its own sad story and impresses upon us the need of the adoption of every reasonable measure to make the highways safer both for passengers and pedestrians.

While the above figures may not be absolutely correct and may be questioned they are supported by the Census figures now published from Washington.

MINIMIZING SITUATION'S SERIOUSNESS

Unfortunately, there is apparently some effort on the part of those whose interests may be adversely affected by a general knowledge of these facts, to minimize the seriousness of the situation. The heavy loss involved in the huge total of accidental deaths however cannot be excused and should not be condoned. In extenuation of this condition, it has been pointed out that 9,000 fatalties is not an unreasonable number compared to the possibilities which exist by reason of the operation of 9,000,000 automobiles.

In supporting this contention, it is estimated that the motor vehicles of the country run on an average of 4,000 miles annually; this gives a total mileage of 36,000,000,000 miles, or an average of 4,000,000 miles of operation to every fatality. It is further contended that accident statistics indicate, when number exposed is considered, that the man who swims in the sea, or the girl who paddles in her canoe, is in greater peril than is the public from exposure or the person who rides in the motor car. It being pointed out that the number reported as accidently drowned in 1920 was 4,977 and that the danger of death by drowning is comparable to the number who suffered death by the automobile. Victims of shooting accidents number over 2000 annually.

In defense of the automobile, it is pointed out that much is said about the criminally careless joy riders, but slight attention is paid to the man "who didn't know it was loaded" and others who were careless with weapons which are known to be fatal but which did more harm than did the joy riders, when number exposed is considered.

Even if it were conceded that the appalling record referred to above is not comparable to accidental injuries and fatalties due to other causes, the fact still remains that a great economic load is being placed upon the nation, which can be controlled and which should be vigorously taken in hand in order that the situation may be immediately improved. The situation is not wholly discouraging however, there are some encouraging signs

which promise some measure of relief. One of which we note with satisfaction recently undertaken right here in our own City.

OUTLINE DRASTIC ORDINANCE

There is now before our board of aldermen, an ordinance intended to deal with automobile speed violators. Instead of the usual fine which has been imposed in the past it is now proposed that these violators will face thirty days in jail.

As formulated the ordinance applies to all types of motor vehicles, private cars and trucks, fire trucks, ambulances and physicians' cars. While exceptions are made only as to cars being operated under a police permit and the United States mail trucks, but these trucks are given preference only with the limitation of 15 miles per hour.

The particular form of reprehensible operation to be corrected here is the "speedster" and for this species of ruffianism the measure provides a jail sentence and no fine. This new measure is considered one of the most drastic ordinances yet proposed. It is phophesied that it will fill all unoccupied accommodations in the city prisons within 24 hours after it becomes operative.

If this prophecy is well founded it is indeed high time that some drastic measure should immediately be given effect. For it is realized that the problems which confront us, arise out of the automobile itself only to a limited degree and when we speak of the developing increase of casualties on our highways, it is not the automobile that is primarily the cause of these accidents but it is the operator of the car.

NO "FOOL-PROOF" MACHINE

If it were exclusively the car we were dealing with, we could reasonably expect that with the improvements which are from time to time being made, the automobiles themselves would become constantly less dangerous or rather more safe both for those who use them and for the other persons who traverse the highways. Our problem is not so much with the automobile themselves, as with those who misuse them, and also with pedestrians and others who misuse the highways.

The genius of man has not succeeded in making a thoroughly fool-proof machine but has constructed a motor car with its various appliances for control, which is in a way a marvel of safety, but it is always possible for a reckless and criminal driver to misuse it so as to endanger his own life and the lives of others; nor are pedestrians by any means free from blame. Carelessly accepting the law that they have rights they cross the streets at all sorts of places and even walk along the street often without the least regard for traffic.

Owing to this personal element with which we are compelled to deal, the moral hazard is one of our most important problems from a liability standpoint and one of the most difficult to measure. Up to the present time it has been found impossible to properly gauge this human element, and until the licensing of automobile drivers and traffic laws generally make very substantial advances, we shall be unable to intelligently deal with this phase of business.

In giving consideration to the "personal element" however the type of automobile and the purposes for which it is to be used must also have our attention.

UNDERWRITING TYPES OF MACHINES

In the early days of the industry, automobile manufacturers produced but two types of vehicles, which we have since come to designate for insurance purposes, as private passenger automobiles" and "commercial automobiles."

The development of the business, however, has been accompanied by the manufacture of various types of vehicles suited to various and sundry purposes. The private passenger type is still largely in the hands of the individual owner, but its utility having been long since recognized now has been adopted to countless uses. In underwriting this class of business we have, accordingly, been compelled to follow the car into the various fields into which it has entered. This we find especially so as respects the commercial automobile.

In the beginning the limited use of the commercial truck enabled us to deal with its operation with slight difficulty, but we are now confronted not only with the various types in daily use but the innumerable uses to which these trucks are assigned. We now not only have the truck used for ordinary commercial hauling, but we must provide coverage for truckmen, expressmen, ambulances, omnibuses, jitneys, funeral hearses and the innumerable types of vehicles, which are now in daily use.

BROADENING OF COVERAGE

In this connection, one very interesting development in automobile insurance is noted in the growth of the business as applied to the varying and complex hazards of the automobile manufacturer. Methods of manufacture, manner of selling, problems of transportation and distribution have created new and previously non-existant hazards which have required entirely new and special treatment. There is now quite generally granted what is known as defective parts insurance. This contract undertakes to indemnify the manu-

facturer for losses which may be occasioned by reason of defective parts in an automobile: where personal injury has resulted due to the defect in construction.

Insurance covering the testing of automobiles at the factory is a new development. Demonstration for the sale of automobiles, accidents incident to the delivery of cars by the "drive away" plan, these and many other varying coverages have all arisen during the past few years and are entirely incident to the automobile industry. The outstanding problems up for solution however are those of traffic and population density and any agency which gives promise of relief from the present situation, should have a fair trial before being abandoned.

"SAFETY-FIRST" MOVEMENT

"Safety First" which has gained considerable momentum during the last few years as a slogan, has been heard to an extent in many of our cities but it is only those who have taken active part in putting its principles into practical operation who have realized the many difficulties in achieving results.

It is encouraging, however, to note that accomplishments have been of material benefit where Safety First campaigns have been seriously undertaken. These accomplishments have been of two phases. First: The actual lessening of death and suffering through accidental causes, and Second: the development of successful organizations for carrying on the work.

As typical of the more ambitious efforts which have been made along this line, it might be well to cite briefly a few of the principles and a brief sketch of the campaign undertaken by the St. Louis Safety Council.

This Council operates as a Department of the St. Louis Chamber of Commerce. It is a voluntary organization, co-operative, non-profit making, non-political, non-commercial. It is supported by public spirited citizens and employers interested in promoting Public Safety, in the prevention of accidents and the conservation of human life. It co-operates with the constituted authorities in the furtherance of the principles of safety. It acts entirely free from political entanglements and endeavors to impress upon the community that the saving of life and lessening of cripples and orphans, by reducing the causes of accidents, is not only humanitarian but is good business.

SCOPE OF SAFETY WORK

The Council attempts to create an atmosphere of safety and a better co-operation between the pedestrians and drivers

of motor vehicles thereby effecting a great economic as well as a social saving to the community.

The Council's program contemplates activities carried on through homes, schools, churches, industries, railroads, public utilities, civic organizations and other agencies, and in this manner developing a community interest in the prevention of injury and death.

One of the Council's ideas is the educating of children in the schools to develop the proper caution and avoid the hazards of the street. The Council endeavors to secure co-operation with the police, the courts, the public, attempts to obtain better laws and proper enforcement of existing laws and regulations affecting traffic conditions, vitally necessary to a safe community.

RESULTS IN ST. LOUIS

The council dedicates itself to the proposition that it is safer to think first than to suffer afterwards. As an evidence of what can be accomplished along these lines, the records of this Council are of especial interest. In 1905 there was listed in the City of St. Louis, 1040 automobiles, in which year there were no deaths. In 1912 with 6,497 cars listed, there were 16 deaths. These 16 deaths in 1912 had by 1920 reached the total of 102 deaths for the single year, with 54,320 automobiles listed. These figures interpreted mean, that in 1918 there was one person killed for every 274 cars. While in 1920, two years later, there was one person killed for every 532 cars. In other words on the basis of car exposure a saving of approximately 50 per cent in the fatalties had been brought about in the City of St. Louis by reason of the work of the St. Louis Safety Council.

Other cities are undertaking work of this character, and it is hoped that the movement may become so general that our public will learn the dangers of our streets and how to avoid them.

There is one other influence of importance which we are looking to for additional relief and that is a comprehensive widely organized system of inspections—while some progress had been made in this direction so far the work had been undertaken and only to a limited extent by some of the insurance carriers and up to the present time has been directed particularly to the automobile truck.

This is I believe a subject which should have most serious attention. Safety First campaigns along broad lines and traffic regulations in particular have proven effective, but little effort has so far been made to eliminate accidents caused by the control or operation of the car itself. Unquestionably

much can be accomplished in this direction: the maintenance of automobiles in good condition, proper instruction and the employment of capable drivers are sure to produce results.

INSPECTION AND EDUCATION

Some of the insurance companies have undertaken these automobile inspections and have inaugurated campaigns of education which it is gratifying to note are producing results. incidentally automobile rates as applied to liability and property damage covering trucks are directly effected by favorable or unfavorable experience requiring an increase. Accordingly the insurance company in carrying on a campaign of this character not only serves to relieve and mitigate to an extent a deplorable situation, but also renders a service to the policy holder in the form of lower rates. Our first desire is the elimination of all accidents. We cannot, however, hope at this time but to minimize the evil. However, any campaign which contemplates the instruction of those entrusted with the operation of automobiles should be of benefit.

It is an encouraging sign that campaigns of this charcter have met with most hearty co-operation on the part of employers, and even a more encouraging feature has been the willingness of the chauffeurs generally to accept suggestions along these lines and evidence a willingness to comply with instructions in connection with efforts of character.

In conclusion it appears to me that we may summarize briefly the more important considerations arising out of the study of automobile liability insurance as falling under the several general headings as follows:

(1.) Traffic density;
(2.) Population density;
(3.) The human element;
(4.) Types and uses of automobiles.

Out of this maze of influences it is our problem to accurately measure the liability due to personal injuries in order that the insuring public may be assessed fair and equitable charges for the protection granted.

CONSEQUENCES OF AUTOMOBILE ACCIDENTS

Automobile Property Damage—Scope of Coverage—Determination of Claims—Methods of Rating—What Is a Collision?—Deductible Form

By Edmund Ely, Manager, Automobile Department, New York Branch Aetna Life and Affiliated Companies.

In the previous lectures you have heard discussed the general principles underlying liability insurance.

The term "property damage" is somewhat misleading inasmuch as it is essentially a form of liability coverage, the only fundamental difference being the basis for measurement of damage. In England the term "third party insurance" is used generally to designate liability coverage whether by reason of personal injuries inflicted or by reason of damage to property.

The insuring clause in common use reads as follows: "Against loss and/or expense arising or resulting from claims upon the assured for damages on account of damage to or destruction of property of every description, including loss of use resulting therefrom (except property of the assured or in charge of the assured or any of his employees or carried in or upon any automobile covered hereby) caused or alleged to have been caused by an accident due to the ownership, maintenance and/or use of any of the automobiles described herein."

The intent of the clause is quite clear that it undertakes to indemnify the assured against losses caused by the ownership, maintenance and/or use of the automobile in respect of damage caused to property of others. This form of cover while essentially liability insurance is also permitted to be written by fire companies, and is the only form of liability insurance which fire companies can write under the law.

LOSS OF USE

In the early days of automobile insurance all reference to loss of use in the property damage clause was omitted, as it was not generally believed at that time that such loss of use of damaged property would constitute a claim upon the assured. In course of time claims of this nature were presented, and some companies, acting on advice of counsel, paid such claims, the contention being that a person who owned a piece of property, whether it be a house or an automobile, not only enjoyed possession of the physical article, but also the right to use such article and, there-

fore, if such right of use were impaired it was as much an invasion of his property right as physical damage to the property itself.

In order to avoid any misunderstanding, some years ago loss of use was made a specific exclusion from the property damage coverage, and permission was given to include it at an additional premium. Subsequently it was recognized that the public demand was for insurance that would fully protect against claims of this nature, and the loss of use feature was included in the coverage, and remains there today.

At this stage I want to point out that loss of use in connection with property damage must not be confused with loss of use in connection with collision. A few years ago some few companies undertook to write loss of use in connection with collision insurance, which means that in the event an assured's own car were damaged by collision he could recover from the company not only the actual damage to the car, but a certain fixed amount to compensate him for the loss of use of his car while it was being repaired. This type of coverage never proved popular and is practically non-existent today.

The clause in the policy contract: "Accidents due to the ownership, maintenance and/or use of the automobile," is very comprehensive and sometimes produces claims which were certainly not within the contemplation of those who drafted the clause, and yet can hardly be avoided under the existing wording. For example, a coal truck was standing alongside the curb delivering its cargo, and the window of an adjacent house being open the coal dust blew into the room, causing damage to the house furnishings. The use of the truck for delivery of coal was contemplated by the company when accepting the risk, and this was certainly an accident, due to the use of the truck in that particular business and, therefore, it came under the coverage of the policy and was paid.

Another case where the liability was not so readily determinable occurred when the owner of a private vehicle accompanied by his son was making a tour. He came to a point in the road where a baseball game was being played in an adjacent field, and automobiles were parked on each side of the road. One automobile in particular was parked so far in the road as to impede progress. The owner's son asked one or two of the bystanders where the owner of the automobile was. They said he was not around at the present time as he was over in the field watching the ball game, but that it would be all right for him to move the automobile.

The owner's son then got into the other car and drove it down the road a sufficient distance so as to permit his father's car to pass, but in the course of moving it he collided with three other

automobiles, damaging each to some extent. The owners of the damaged automobiles made claim against the father, who in turn filed a claim with the insurance company who was carrying property damage insurance for him. The contention was that notwithstanding the fact that the actual damage had been inflicted by another car, such other car was being driven under his direction and the damages inflicted by the other car were due to the ownership, maintenance or use of his own insured automobile.

SCOPE OF COVERAGE

These are cases that seldom arise, and yet are interesting as illustrative of how far the coverage can extend. It has often been discussed as to whether or not it is advisable to limit the coverage of a policy to accidents within the contemplation of the policy drafters; in other words, accidents usual to the contemplated operations, or whether the insurance should cover the unusual as well as the usual claims. It seems that the trend is toward the latter line of thought as rendering insurance more valuable to the public and performing its true function.

This form is usually provided in multiples of $1,000, the basic premium being charged for the first thousand and additional amounts being provided for very much smaller premiums. While the vast majority of claims are of a comparatively trivial nature, such as damage to fenders, damage to clothing by spattering of mud, damage to clothing by being torn by protruding screws or nails in automobiles used for transporting passengers, nevertheless there are many cases in which the usual limits have proved entirely inadequate.

I have in mind one particular case where a car came into collision with a street hydrant, breaking it off. Before the flow of water could be stayed, it had found its way into the basement and sub-structure of an adjoining store, undermining the foundation and causing a partial collapse of the building. The total amount of damage in this case, including the actual physical damage to the building and the loss caused by interruption of business, was well in excess of $100,000. The argument for higher limits is so evident as not to require elaboration.

DETERMINATION OF CLAIMS

I had not intended to touch on the handling of claims in the course of this discussion, but inasmuch as I have pointed out that property damage is a form of liability insurance, and is permitted to be written by fire companies, it should be borne in mind that there are two factors entering into the determination of claims just the same as in any other form of liability cover, first, the liability of the assured; second, the ascertainment of the damage caused by such negligence.

In considering the liability of the assured, it is important to note that courts have almost unanimously declared that an automobile is not inherently a dangerous machine. Even in the early days when automobiles had not been developed up to their present state, this fact was definitely established, and one of the important decisions recites the case so clearly and is so whimsically expressed as to make it worthy of quotation. The Court of Appeals of the State of Georgia handed down the following decision:

"It is insisted in the argument that automobiles are to be classed with ferocious animals, and that the law relating to the duty of the owners of such animals is to be applied. It is not the ferocity of the automobile that is to be feared, but the ferocity of those who drive them. Until human agency interferes they are usually harmless. While by reason of the rate of pay allotted to the judges of this State, few, if any, have ever owned one of these machines, yet some of them have occasionally ridden in them, thereby acquiring some knowledge of them; and we have, therefore, found out that there are times when these machines not only lack ferocity, but assume such an indisposition to go that it taxes the limit of human ingenuity to make them move at all. They are not to be classed with bad dogs, vicious bulls, evil-disposed mules, and the like."

The bearing of this and similar decisions on the status of the car owner will be evident when it is considered that an adverse decision would have characterized the automobile as a dangerous instrument. The law requires the owner of a dangerous instrumentality to guard, control and protect it and to be responsible for its improper use by a servant, even though the servant may not then be engaged in the performance of his duties. The automobile owner, then, is liable, first, for his own negligence, and second, for the negligence of a servant when acting within the scope of his employment. Some local modifications of this rule have been made to which I shall refer later.

OMNIBUS COVERAGE FEATURE

The same clause relating to additional interests (usually called the "omnibus coverage feature") applies to property damage just as it does to liability. The clause reads as follows:

"While any automobile covered hereby is being used with the express or implied consent of the assured or of an adult member of the assured's household who is not a chauffeur or domestic servant, the provisions of this policy with respect to claims upon the assured on account of damage to property of others shall inure to the benefit not only of the assured, but also to the benefit of any person riding in said automobile, and to the benefit of any person, firm or corporation responsible for the operation of said automobile."

The introduction of this clause was occasioned by various conflicting decisions throughout the country, some attempting to limit the liability of the owner under the old common law doctrine of master and servant, and others extending the principles so as to cover practically every operation of the automobile. As illustrative of the more conservative tendency to restrict the liability within the limits fixed by common law, we had a case where a doctor owned an automobile which was being used with his permission by his son at the time that the damage occurred.

In denying recourse upon the doctor the court said: "All the evidence produced by the plaintiff to establish the doctor's responsibility for the action of his son was that the former owned the automobile and that the same was at the time being used with his permission or consent by the son. That is not sufficient. Every time an owner lends any article or instrumentality to another, whether for hire or gratuitously, the owner consents to its use by the borrower or bailee. To hold that evidence of that fact is sufficient to fasten liability upon the owner in case some damage is inflicted by the negligent use of such instrumentality while it is in possession and under the control of a third party is revolutionizing the law which holds the principal or master liable for the acts of his employee or servant. We are under the opinion, therefore, that the plaintiff produced no evidence which supports the findings of the jury or the judgment of the court as against the defendant."

IMPOSING EXCESS LIABILITY

In some States there has been an attempt to fix on the owner of an automobile a liability in excess of that imposed under the common law. For instance, in Michigan a statute was introduced attempting to make the owner responsible for all injuries occasioned by the negligence of the driver of a machine except in the case of its being stolen. This, however, was declared unconstitutional, and was followed by a subsequent law which provided that the owner would not be liable when the machine was driven without his consent or knowledge, and such law is constitutional and is now in effect. Nevertheless, it will be seen that it extends the liability further than the common law does inasmuch as it makes the owner liable when the automobile is loaned to another. The clause as now in use in the policy takes care of either event, and is a further indication of the tendency toward broadening the coverage.

METHOD OF RATING

The method of rating the property damage risk is along the same lines as that pursued in automobile liability. Experience is kept by companies on a per car basis; for example, suppose a

company insures 1,000 cars for property damage. By consulting its claim files the company finds that the total cost of settling claims for accidents resulting from those 1,000 cars (including estimates for outstanding cases) is $20,000. This means that the actual cost per car is $20, and this is called the pure premium. Now suppose that particular company were operating only in the State of New York, and it was desired to make three rate subdivisions, one for New York City, one for other cities in excess of 100,000 pouulation, and one for the remainder of the State. The company would go over its records and separate the 1,000 cars according to territory.

It might find that 300 were New York City cars and that the claims on these cars amounted to $9,000; 300 other cars were in cities of over 100,000 population with claims of $5,400, and the balance or 400 were located in other portions of the State with claims amounting to $5,600. This would indicate that the pure premium for New York City would be $30, for the 100,000 population cities $18, and for the balance of the State $14, and the rate differentials from the average pure premium would be for the three territories 1.5, .9 and .7, respectively. It should be borne in mind that the pure premiums must be loaded for acquisition expense, claim expense, taxes and general company overhead.

From the foregoing it will be seen that any number of classifications can be established and rated, according to territory, according to use, type of car, or any arbitrary division adopted in keeping experience. In practice, however, too many subdivisions are not desirable, since they make the business more complex in handling, and there is always the danger of not having enough volume in each subdivision so that a true average might not be developed.

COLLISION INSURANCE

Collision insurance is designed to indemnify the owner of an automobile for the damage to his own machine occasioned by collision. The insuring clause is as follows:

"Against direct loss or damage to the automobile described, including its operating equipment, if sustained while this policy is in force, and if caused solely by accidental collision with another object, either moving or stationary (excluding, however, all loss or damage by fire arising from any cause whatsoever), provided that:

"1. The company shall not be liable for loss or damage to any tire unless caused in an accidental collision, which also causes other loss or damage to the insured automobile.

"2. In event of loss or damage to the insured automobile, whether such loss or damage is covered by this insurance or not, the liability of the company on account of accidental collision

shall be reduced by the amount of such loss or damage until repairs have been completed, but shall then attach for the full amount as originally written without additional premium."

Collision insurance has probably undergone more changes since its inception than any other form of automobile insurance. In the early days it was customary to issue this cover under a form which exempted the company from liability by reason of collision with any part of the roadbed or with the rails or ties of any railroad or street railway. It was also customary to issue only two forms, one the full coverage form and the other a form which provided $25.00 deductible from each and every loss sustained. The present stipulation of the policy providing that the company shall not be liable for loss or damage to any tire unless the result of a collision which causes other damage to the car is merely a different way of expressing the thought which was incorporated in the original exclusion as to roadbed and street railway ties and rails.

As regards the deductibles, it has been clearly demonstrated that the $25.00 deductible form was the subject of considerable abuse, and at present three alternative forms are provided: full coverage, $50 deductible and $100 deductible.

WHAT IS A COLLISION?

The question of what is a collision is one concerning which there have been many views expressed. The words "accidental collision with any other object, either moving or stationary," may be considered to indicate intent of the company to cover such accidents as occur while the insured car is in motion, and nevertheless if the insured automobile is standing alongside a curb and is run into by another automobile it is no less a collision under the terms of the policy. It has been held in some States that an upset of the automobile due to running too close to a bank is damage caused by falling over the bank, and is not a collision within the meaning of the policy. On the other hand, in other jurisdictions, under circumstances approximately the same, it has been held that the company is liable.

There have been many unusual claims presented under the collision cover. I have in mind one particular case where the owner of a new and highly polished automobile drove up to a farmhouse to get some fruit. During his temporary absence in the farmhouse a turkey gobbler came up to inspect the automobile and was attracted by his own reflection. Being of a somewhat combative nature, he proceeded to resent this intrusion of his own preserves, with the result that the new paint on the automobile was considerably damaged.

In another case an automobile was parked along the curb, and a horse and wagon drove up behind it. The horse commenced to

lick the back of the automobile, and liked it so well that he licked one spot clean, and the result was an expensive paint job. Now, there is no question but what the damage in each of these cases was caused by collision with another object, and yet there is a considerable feeling that the original cover provided should not be capable of being interpreted to cover damages of this nature. On the other hand, it is the tendency of many companies to write insurance which will cover all accidental damage and charge proportionately.

In connection with this point it might be stated that quite recently an analysis of some 10,000 automobile collision claims was made, and it was found that if a form were designed to exclude these unusual accidents it would have very little bearing on the premium charged. By far the vast majority of cases involved damage to fenders, running boards, mudguards, radiators, headlights, and such body damage as was inflicted was the result of actually colliding forcibly with some other object.

DEDUCTIBLE FORM TENDENCY

By far the most striking tendency in collision insurance is the advocacy by companies of the $50 and $100 deductible forms. These forms will exclude the majority of the unusual claims, will reduce the cost incidental to investigation and settlement of minor damages, and will probably induce more careful operation of the automobile. The differential in rate in favor of the deductible form of coverage is very marked, and without question the far larger proportion of collision insurance is now placed under the deductible forms. The trend toward deductible collision is influenced to a large extent by the increasing congestion in large cities where minor bumps and damages seem to be normal to the operation of a car, something to be foreseen and contemplated by the owner in the same way as gradual deterioration and wear and tear is foreseen; in other words, something to be expected as the usual result of the operation of a car rather than an unexpected contingency to be insured against. The difference in rate in large cities is indicative of the tremendous cost in which the companies are involved by reason of the frequency of minor accidents and the expense attached to their settlement.

MINOR DAMAGE CLAIMS

In addition to the foregoing arguments may be considered the well-known fact that many automobile owners not carrying collision insurance will not repair their cars by reason of some slight damage which affects in no way the operation of the car, but which may detract slightly from its appearance. The fact is so well established as not to be open for discussion that many other owners who do carry full coverage collision will not only insist on each and every minor damage being repaired, but sometimes,

for a trivial damage, will insist on an entire repainting job for the car. I think it is not overstating the fact to say that it is the general belief that it is for the good of the business to advocate the sale of the deductible forms of collision whereby the owner gets a marked discount in his premium rather than to continue to inflate the present high cost of automobile insurance by urging the full coverage form with its attendant abuses.

A discount is provided from the premium for automobiles equipped with bumpers of an approved type and pattern. These appliances have been found to be of considerable value in preventing and diminishing damage caused by collision. The testing of these appliances is in the hands of Underwriters' Laboratories, Inc., who do work similar in nature for fire and casualty companies in establishing standards for preventing and reducing insurable risks and in testing such appliances as are submitted for ascertainment as to their complance with the standard.

COLLISION A PARTIAL LOSS

In rating the collision hazard the outstanding point to be considered is that collision is essentially a partial loss coverage. Cases where the automobile is so seriously damaged as to constitute an actual or a constructive total loss are exceedingly rare. While the method of developing pure premiums and territorial and other differentials is the same as in property damage, care must be taken in handling the results to give due recognition to the partial loss element as distinguished from the inconsiderable hazard of total loss. This is particularly true when dealing with the deductible forms of cover. In a full coverage premium of $60 or $70, 80 per cent of it must be attributable to losses under $100, and, therefore, it is unsafe to attempt to convert a full coverage premium into $50 or $100 deductible premiums without a careful examination of all the attendant circumstances in the experience.

The rating of the collision hazard is complicated by price changes in which automobile manufacturers have freely indulged within the last eighteen months particularly. While the list price does not necessarily determine the premium, nevertheless it must receive some consideration as there will be some percentage of serious losses, however small it may be. The principal factors in a determination of a premium are the cost of parts and the cost of labor and fluctuations in the prices of these commodities has a distinct bearing on the rate. It has been discovered in some cases that manufacturers have reduced list prices for their product and have not made corresponding reductions in the prices of parts, and this condition explains some of the anomalies which have, no doubt, been detected by careful students of the various rates as applied to individual cars.

Another consideration to be reckoned with is the repair facilities in the particular territory. This has more bearing on risks located in sparsely populated areas where the cost of making repairs may be doubled by the non-existence of any proper local facilities.

COMMERCIAL CARS

On commercial cars the type of body is a distinct element in the risk. Small delivery wagons of the panel or ornamental body type present a proportionately larger hazard than the heavy, slow-moving dump truck of such heavy construction as to be able to resist small collisions without incurring any considerable damage.

I am calling these features to your attention not because they necessarily enter into the actual establishment of the rate, but because they are factors in determining the hazard. The rate-making body must exercise its judgment to select whatever features are of sufficient importance to be reflected in the rate, and must leave to the underwriting judgment of individual companies the minor differences between risks which have the same classification from the rating standpoint. It is very easy to introduce too much refinement into rating so as to make the handling of the business very difficult and cumbersome and to present a definite sales resistance from the agent's viewpoint. Furthermore, in practically all of the States it is required that a company shall not discriminate between risks presenting essentially the same hazard, and if the rating association should attempt to recognize by rate differentials all of the minor differences that exist between risks, it might conceivably find itself in difficulty with insurance departments.

The business of automobile insurance has probably developed more rapidly than any other single line within our experience, and even at the present time we cannot say that the volume may not increase materially in the future. One effect of this rapid growth in premium incomes coupled with the changing conditions surrounding the use of automobiles has been that companies have been constantly called on to face new problems. The condition is in no wise comparable to that of fire insurance, which is a highly organized field and from its very nature induces stability in methods of handling. It is to be hoped that the earnest thought now being given to the business of automobile insurance will be productive of a greater degree of stability in forms, methods of rating and underwriting practices than has been possible in the past.

FUNDAMENTALS OF AUTOMOBILE RATING

Automobile Coverage and Rates—Limits Written—Meaning of "Moral Hazard"—Compilation of Experience—"Loading"—Rate-Making Knowledge

By A. Ryder, Superintendent, Automobile Department, Bureau of Casualty and Surety Underwriters

My subject is "Forms of Automobile Coverage and Determination of Rates." I am limiting this discussion, however, to the elementary features. Furthermore, I am going to be able to touch only the high spots in the time allotted me. The subject is not one that can be covered in a few words any more than you could hope to learn in a half hour all about the design of steam engines. I must, therefore, deal very largely in generalities.

Automobile public liability coverage protects the owner of an automobile for his legal liability because of personal injuries to other persons due to the ownership, maintenance, or operation of his car. The coverage generally offered by the companies is very broad and protects the owner for almost every conceivable kind of claim or suit that might be brought against him because of personal injury done by his automobile. The policy excludes, however, any coverage while the car is being operated in a race or speed contest and while it is being driven by a person under sixteen years, or under the age limit fixed by law. It also excludes coverage while the car is being used as a taxicab or livery car, unless the owner has paid a sufficient premium to cover the hazard. Ordinarily, the public liability policy is written for the standard 5/10 limits. By 5/10 limits is meant that the company will pay any loss up to $10,000 for injuries to more than one person, in any one accident, subject, however, to a limit of $5,000 for any one person.

The property damage coverage is very closely allied to the public liability coverage and protects the owner for his legal liability for whatever damage his car does to other people's property. The same exclusions appear in the property damage policy as in the public liability policy and in addition coverage is excluded for any property carried in or upon the insured automobile. The standard limit for a property damage policy is $1,000. The owner can purchase insurance, how-

ever, for very much higher limits by paying additional premiums.

Collision insurance protects the owner for damage to his own car. There are three forms of collision insurance—full coverage, which protects for every accidental collision loss, no matter how small it may be; $50 deductible, which is sold at a much cheaper rate, requires the owner to pay his own losses up to $50 and to pay the first $50 of any larger losses; and the $100 deductible coverage, which sells at a still cheaper rate and requires the owner to pay the first $100 of each loss.

Theft insurance protects the owner for the theft of his car or any of its equipment, and fire insurance covers the owner for fire losses. There are a good many forms of fire and theft coverage as written by different companies and in different parts of the country. Some of the policies for fire and theft offer full coverage. Other policies exclude the small equipment losses, such as the theft of spare tires or motometers, and still other policies require the owners to stand one-quarter of the loss. These various restrictions have been put into effect mostly during the past year or two because the fire and theft losses were becoming excessive. The object has been to encourage the assured to be more careful of his property by making him stand a part of each loss.

Years ago automobile rate-making was a comparatively simple task. Automobiles were grouped into a few large classes and average rates were established on broad lines. This is all changed today, however, and our present automobile manual contains hundreds and hundreds of different rates.

First, of course, there must be separate rates for each of the coverages. The principal coverages are public liability, property damage, collision, fire and theft. Additional coverages are employers liability, cyclone and windstorm, transportation (which is usually included with the fire), water damage, earthquake and explosion, riot and civil commotion, embezzlement, confiscation, and inland marine (covering goods carried by automobiles). Then, too, there are the various kinds of bonds and sureties required. Furthermore, it is not enough that rates have to be made merely for each of these forms of coverage, but entire sets of rates must be made for the three different kinds of collision coverage, for the various limits of public liability and property damage coverages and for the several kinds of fire and theft policies. Then, too, each of these coverages must have a complete schedule of rates covering all the various territories within United States, and covering each type and class of car, and the various uses of same.

HOW RATES VARY

You will understand, then, that the task of making automobile rates is no simple one. It takes days and days to prepare the tabulations and analyze the figures just for one set of rates alone.

The rates for public liability coverage are higher in New York City than anywhere else in the country. Similarly for property damage and collision coverage. These three forms of coverage are the casualty coverages. In other words, they cover accidental injuries and damages, and naturally one would expect the highest rates in a city like New York where there is the biggest opportunity for accidents. The fire rates also vary according to territories, but the highest fire rates are found in the south. Similarly, the theft rates differ very widely from city to city and from State to State. At the present time Chicago carries the highest theft rates of any part of the country. I mention these variations merely to show that the territory had a great deal to do with the rates. A car in New York City can be rated five or ten times as high as a similar car a hundred miles away.

Not only must each individual form of coverage have a separate rate for each territory, but further subdivisions must be made for the various kinds of automobiles and their uses. A Packard carries a higher public liability premium than a Buick, and the Buick is charged more than the Ford. The rate per hundred dollars of fire and theft insurance is very much higher, however, on the Ford than on the Packard. If a car is used for both business and pleasure, it is charged a higher rate than a car that is used for pleasure only, and a car that is driven only by the owner and only for private purposes is given a lower rate than a car that is driven by any person. A commercial car used as an ambulance, or one that is used to deliver newspapers, carries a very much higher rate than a commercial car used by a manufacturer or wholesale house. Not only are commercial cars rated according to their uses, but the load capacity is also a factor of the rating. The heavier trucks take the higher rates.

Do not try to remember all of this. I merely mention them to show how the rates vary for the various types of cars and also according to the uses of the car.

LIMITS HIGHER THAN STANDARD

The owner who insures his car for public liability and property damage coverage may take out a policy, if he chooses, with very much higher limits than the standard limits. The standard limits are 5/10, which means that the insurance com-

pany will cover any accident up to $5,000 for any one person injured, but not to exceed $10,000 for the whole accident. A man can get twice as much insurance by paying only 20 per cent more. He can get ten times as much insurance by paying about 45 per cent. more. The reason for these graded charges is quite obvious. Most of the losses are small losses, so it naturally takes a great deal more premium to cover the first $5,000 than it does to cover the next $5,000, and so on up the scale.

There are three standard forms of collision coverage: the full coverage which covers every collision loss to the car itself, large or small; the $50 deductible coverage which requires the owner to stand the first $50 of each individual collision loss, the insurance company paying all in excess of that amount; and the $100 deductible coverage where the owner pays the first $100 of each collision loss. Naturally, the full coverage rates are much higher than the deductible rates and the $50 deductible rates are higher than the $100 deductible. Furthermore, the expensive car is charged more than the cheap car, but not in proportion to the list price.

In other words, a $5,000 car is charged only about twice as much for full coverage as a $500 car. The reason for this is that the small collision losses predominate. Half of all the full coverage collision losses do not reach $50 in amount and for every loss that reaches $1,000 there are one hundred losses of under $50. Of course, it costs more to repair a minor loss on an expensive car than it does to repair the same kind of damage done to a cheaper car, but the relativity of repair costs for the two cars is not anywhere near as high as the ratio of their list prices, chiefly because the item of labor is usually the big item in repair work and it takes just about as much time to make a repair on a cheap car as on an expensive car.

Theft rates depend primarily, of course, on the type of car that is being insured. The popular cars are stolen much more frequently than the cars one seldom hears of, first, because it is harder to detect the thief (for, to the thief, there is safety in numbers), and, second, the thief finds it easier to dispose of the popular car. Therefore, the theft rate on a Ford car is in many cases ten times as high as the theft rate on a Sterling car, for example. Furthermore, the theft rate is higher where the complete car is covered, including all accessories, than it is where the accessories are excluded. A great many spare tires and motometers are being stolen today, which has made it necessary for the insurance companies to charge a high premium for that kind of coverage.

The fire insurance rates do not vary from territory to territory to as wide an extent as the theft and public liability rates do. The fire hazard is divided into two parts, first the inherent hazard of the car itself, and second the hazard of its garage. As a general rule the high priced, well constructed car pays a lower fire rate per hundred dollars of insurance than a cheap car, although the total fire premium for the high priced car will, of course, be larger than the total fire premium for the cheaper car.

MEANING OF "MORAL HAZARD"

You have doubtless been hearing a great deal about "moral hazard" in automobile insurance, particularly since the price of cars began to tumble. Ordinarily the words "moral hazard "refer to the character of the assured, or the so-called "human element" of the risk. The risk may be either good or bad. But the words "moral hazard," as often used, apply only to the bad moral risks, the assureds who conspire to defraud the insurance companies. If a man purchased his car when prices were high and insured the car at its full value, he is tempted later on when the prices have gone down and his car is no longer new, to destroy the car and collect his insurance. A good many dishonest car owners have attempted this.

There have been more than twice as many cars burned on the road, particularly in lonely spots, than ever before. Similarly, a great many cars have been "stolen" that never would have been "stolen" if the owner had not had his car overinsured. The owner may not deliberately connive with a thief to have his car stolen, but he will be just as careless with his car as he knows how, which is just about as bad. The remedy, of course, lies in requiring the owner to insure his car for less than it is worth, so that the owner will always have an inducement to protect his property. Insurance companies find it very difficult to do this in all instances, however, because the policy runs for a full period of twelve months and the value of a car changes quite materially during that time.

RATING NOT "MYSTERIOUS"

I have now passed over some of the general rating problems with which the companies are confronted. There is nothing mysterious about the establishment of rates for automobile insurance. First, it is necessary to know the coverage—and to know every detail of it. For instance, the property damage coverage of today is a broader coverage than it was several years ago, first because it includes incidental loss of use

coverage (by loss of use is meant the payment not only of actual damage to other people's property, but for the indirect loss suffered by other people because of the loss of use of their property), and second because of our so-called omnibus coverage clause which protects not only the owner of the car for his liability, but any other person who is driving with his permission. Therefore, the cost figures collected on cars that were insured for property damage coverage several years ago must be loaded for the broader policy of today.

Second, it is necessary to know the risk, and here again a detailed knowledge is essential. There is more congestion today than in years gone by. On the other hand, drivers are becoming more experienced and there are better laws and regulations. Some cities are improving their accident records, whereas other cities seem to be growing worse. Individual risks also vary from year to year.

Third, the man who makes rates for today ought to have in front of him all of the cost figures for the risks that were insured in the past. This is the basis of practically all rate making. If one is making rates for department stores in New York City, for example, it is not only necessary to have experience for the *New York City* department stores that were insured in the past few years, but also for the department stores of other cities, and also for other classes of stores. The broader the experience, the easier it is to calculate the estimated cost.

Fourth, one must know not only what it has cost in the *past* to insure department stores and other risks, but one must also know what the *recent* tendencies have been. Are costs going up or down? And are accidents occurring more frequently or less frequently?

COMPILATION OF EXPERIENCE

I will say a few words now about the experience which is being kept by insurance companies so that they may know exactly what their insurance is costing them.

Just as soon as a risk is insured the company makes a record of the risk, showing all of the particulars. Many of the companies now use the Hollerith card system of keeping a record of mass experience by classification, territory, etc., although, of course, each company keeps the experience on each individual risk separately. I will not go into detail about the Hollerith card, except to say that the card is so designed with columns of figures that one comparatively small card can be punched to show all of the detailed information regarding any risk.

For instance, if a risk is located in Chicago, then perhaps a number fifty-nine is punched to stand for Chicago. Another punching on a different column is made for the date, still another for the amount of premium, for the type of car, for the use of the car, etc., etc., until all of the columns have been punched with one number or another. Just as fast as losses occur, cards are also punched for the losses. Whenever a risk is cancelled, a cancellation card is put through. At the end of the year these cards are run through the machines, separated, and added in various ways so that the company knows not only how many cars were insured in each territory, but also how many of each particular type, and what the losses were.

Probably some of you have been handling these Hollerith cards. If so, you will understand the importance of properly coding each risk and you will further understand how difficult it is at times to know what codes should be applied particularly for risks of an unusual nature or for border line risks. Needless to say, mistakes are occasionally made in the handling of thousands and thousands of risks and each of these mistakes makes the total volume of experience unreliable to just that extent. Sometimes these mistakes are not noticed until the final comparison is made after all of the compilations are completed. It is then necessary to trace back the work to the very beginning in an effort to straighten out the error.

ANALIZATION OF LOSS FIGURES

These loss figures must then be analyzed and in many cases they must be projected to an ultimate basis. For example, public liability losses are not always settled within a few weeks after the date of the accident. It sometimes takes a year or more before a particular case is settled. In the meantime the company has estimated what it thinks the case is going to cost and that estimate has been punched on one of the cards as an "outstanding loss." At the end of the year, then, the experience shows two kinds of losses—the paid losses and the outstanding losses. The paid losses can usually be relied upon as being definite (although even a paid loss may and often is reopened, resulting in an ultimate loss considerably higher). The "outstanding" are subject to considerable change.

Occasionally a company may have over-estimated its outstandings in the aggregate, but in most cases they have been under-estimated. By waiting another twelve months and tabulating the losses over again, a company is able to determine to what extent its previous estimates were correct. It is necessary to wait as much as twenty-four or thirty-six

months after the policy year is closed before a company knows exactly what its public liability business for a given year has cost. Property damage losses are also delayed in settlement, but not to anywheres near the extent that the public liability losses are. Collision losses are usually settled promptly. Similarly for the fire and theft losses. It is, therefore, apparent at once that the experience for each form of coverage has to be separately studied.

When the experience is collected for any one form of coverage—take the public liability coverage, for example—the tabulations are compiled in various ways. First, a separate record is made for private passenger cars, another for commercial cars, still another for taxicabs, and so on for each separate type of car. The private passenger electric cars are shown separate from the private passenger gasoline cars. Similarly for the commercial electrics, etc. Then the experience on each type of car is shown separately for each territory, so that the company may compare New York City with Chicago, with St. Louis, etc., for every other territory. Finally the experience is shown separately for each kind of a private passenger car. All private passenger gasoline cars have been thrown into four groups for public liability coverage. The Ford and other cheap cars are in the lowest group; the Buick and cars of similar class are in the next group; Cadillacs are in the third group, and all the high-priced cars are in the fourth group. Not only is it necessary to keep separate experience on each of these four groups, but also for each of the three classifications according to use.

Some cars have been insured for full "business and pleasure" use, and still others only for private use and to be driven by the owner only. Commercial cars are also classified in detail, and experience must be tabulated separately for each class as well as for each territory. The same is true all down the line. For example, there are four different kinds of jitneys alone, those with seating capacity from 0-12, others designed to carry from 13-20 passengers, others from 21-30 and others of over 30.

RECORD KEEPING A TASK

It is no simple task to keep separate records of all these kinds of automobiles and for all the various territories. The entire set of records must be repeated again for property damage coverage, still again for each of the three forms of collision coverage, and so on for the other coverages. In addition to these tabulations of experience, companies also make special studies of claims and special studies of how the experience develops from year to year.

Even after all of this experience is collected, the task of making rates has only begun, because, after all, the experience does not mean anything until it has been analyzed. For example, one company may have insured only ten Packards in Hartford, Connecticut, and twenty Fords. Due to one large loss on the Ford cars, the experience for that particular company may show a very much higher loss cost on Ford cars in Hartford than on Packards, whereas just the reverse may be true in Bridgeport. By combining this company's experience with other companies' experience, these chance indications are removed to a large extent, but even where the experience of a large number of companies has been pooled, there are still individual territories and classifications where the volume of experience is too small to be thoroughly dependable. For example, all of the companies put together that are writing insurance in the State of Arizona have not insured enough Packards so that the experience on Packards is thoroughly dependable for that State by itself. This is where the real task of rate-making enters. Arizona must be grouped with other States of similar hazard, and Packards must be grouped with Locomobiles and other cars of similar class.

Various groupings are resorted to in this manner to arrive at averages, and yet no grouping must be made until the actuaries and underwriters are thoroughly satisfied that all of the cars thrown into one group belong in that group. This is where judgment enters into play, and since no two men think alike, it is usually the custom for committees to pass on matters of this kind. A number of men get together and study the experience, they try out the various groupings and analyze the experience from all possible angles before they reach their conclusions.

LOADING FOR EXPENSES

After the men have determined the detailed loss costs, it is necessary to apply a loading to take care of home office expenses, taxes, etc. Some companies operate at slightly less cost than others, so here again it is necessary to strike an average. Finally, the committee must determine whether the loss costs have been increasing or decreasing since the period for which the experience was collected. For example, the policy year 1919 includes all policies that were written during that year. These policies expire all during the year 1920. At the end of 1920 the companies were able to collect the experience for the 1919 policy year. It usually takes several months to collect this experience and compile it, so it is not until the middle of 1921 that the companies know what their 1919 business has cost them. Even then they do not know

exactly what the business has cost, because of the "outstandings." However, they know within a reasonably small percentage.

This experience is reviewed during the latter part of 1921 to make rates for 1922. The rates which are made for 1922 will cover policy writings in 1922 and accidents that occur in both 1922 and 1923. Therefore, the latest policy year experience available is the 1919 policy year experience, and yet rates must be made for accidents that will occur in 1922 and 1923. This is a gap of three years. It is quite evident then that the rating committee must have all available data since 1919 and 1920 as to the trends of loss costs and accident frequencies.

Most of the loss costs reached their peak in 1920 and have been coming down. This is not true of liability claims, however, because the tendency has been for higher and higher verdicts. Therefore, each form of coverage must be analyzed separately for its tendencies and each territory as well. The experience seems to be improving for some cities, whereas it is growing much worse in others. This is particularly true of theft insurance where conditions change quite materially as cities either grow lax in their police enforcement or as they bend every effort toward cleaning up the gangs.

TREATING INDIVIDUAL RISKS

After rates are established for large groups of risks, separate rating methods must be developed for treating individual risks. For example, an average rate is determined for all department stores in New York City, but some department stores may keep their automobiles in better condition than others, and may have a much better record for one reason or another. If a risk is large enough so that its own individual experience is an indication to what extent it is better or worse than the average, then that risk is separately rated and it receives a differential either above or below the average rate. This is called experience rating.

I have touched on many of the broad principles of rating, but have not attempted to go into any detail. I will, however, recite a few figures that will be of interest to show why the cost of automobile insurance is as high as it is.

The average liability claim costs about $300 today. This is exclusive of the home office expenses, taxes and other overhead expense that a company naturally has. The average private passenger car rate in Hartford is about $30. This means that a company does not expect the average private passenger car in Hartford to have more than one loss in about fifteen years. The average property damage claim is about $40 and the aver-

age rate in Hartford is around $11. The average full coverage collision loss is around $75 and the average rate in Hartford is about $183.

It is apparent from these figures that the companies expect a private passenger risk in Hartford to have a public liability loss once in about fifteen years on the average, to have a property damage loss once in about five or six years on the average, and to have a full coverage collision loss slightly more than once a year. Of course, these figures are only general, and they vary considerably from territory to territory and from risk to risk. A risk in Arizona ought not to have a public liability loss in forty years on the average, but an ambulance in New York City would probably have at least one a year.

RATE-MAKING KNOWLEDGE

In summing up, I would say that making rates for automobile insurance merely requires that you at least have a ground knowledge of the various phases of the automobile insurance business.

First, it is necessary to know—and to know well—each form of coverage how the policy forms have been interpreted; what these coverages were in the past, what they are today, and what the proposals are for the future.

Second, you should have a knowledge of the settlement of claims; what was the practice of your company and of other companies in the past and what is it today, particularly in respect to the promptness with which claims are settled; furthermore, whether policies were strictly interpreted in the past or whether the claim department has adopted a broader view and pays numerous claims that could have been denied under a strict interpretation of the policy itself.

Third, one should know what the tendency is in claim costs and loss cost in general, then apply it separately to each form of coverage and also to each territory.

Fourth, you should know the practices of the companies in auditing their risks and to what extent additional premiums are collected upon audit; also the proportion of business that is cancelled during the year and how the audits and cancellations affect ultimate earned premium.

Fifth, a general knowledge of underwriting is essential. You should know the proportion of large and small risks insured, the number of city cars compared with country cars, the number of expensive cars compared with cheap cars, what class of business is accepted by the companies and what risks are turned down, and what special endorsements are attached in individual cases. In this connection it is interesting to note

that the companies pooling their liability experience insure as many as 30 per cent of all the cars registered in some cities, but these same companies may insure only one-half of 1 per cent of the cars registered in some rural sections of the country.

Sixth, each company has its own method of handling statistics and its own set of codes. Some companies classify certain classes of business under one code and other companies may class it under a different code. It is important to know just how the companies have treated their business before making use of their experience for rate-making purposes.

Seventh, you must have a good knowledge of mathematics, and a little knowledge of higher mathematics. The laws of probability play an important part in rate-making.

KNOW TREND OF TIMES

Eighth, one should know the general trend of the times, aside from the mere question of loss costs. The general increase in cars on the street has a bearing on the hazard. The general trend of legislation and regulation also has its effect on insurance costs. The enforcement of prohibition should also improve the experience to some extent.

Ninth, the insurance companies are governed in their policy forms and settlements by laws that have been passed. These laws vary from State to State. In some States and municipalities laws and ordinances have been passed requiring jitney owners to insure. Furthermore, the courts in some States are inclined to render higher verdicts than the courts in other States. It is essential that the rate makers know the legislation of the past and the trend of legislation today.

Tenth, one should also have a general knowledge of the construction of the automobile itself. Some cars are better equipped to stand up under collisions than others. Some cars have better brakes than others. Rate-making depends to a certain extent on the features of the car itself and on the preventive devices attached thereto, such as bumpers, fire extinguishers and locks.

One cannot hope to have an expert knowledge in each of these branches of the business, but it is desirable that you at least know the general principles of every phase of the business, if you would take a hand at making automobile rates.

EVOLUTION OF COMPENSATION INSURANCE

Law of Master and Servant—Events That Influenced Compensation Legislation—Employers' Liability Act—Ives Test Case—Development of Law

By Leon S. Senior, Manager, New York Compensation Rating and Inspection Board

This article is intended to be a general introduction to that phase of the master and servant law which deals with compensation for injuries sustained in the course of employment. An historical review of the law shows that its development follows quite logically the ethical, political and economic progress of society. The obligation to compensate an employee for injuries is ancient in origin and has been traced back to a period antedating the Christian era.

American students are chiefly interested in the development of the common law which, together with our language, we have inherited from England; the discussion of the common law is not altogether academic. It is also of practical interest to students of liability and workmen's compensation insurance for the reason that even today the employer in the United States is subject to several forms of liability depending upon the laws of the particular jurisdiction, the character of the work, and the class of workers that may be employed. For example, in the State of New York an employer may be held liable for injuries to workers under three different provisions: (a) Under the provisions of the common law as modified by employers' liability statutes; (b) under the provisions of the New York Workmen's Compensation Act, and (c) under the provisions of admiralty law. The distinction in the several forms of liability is important because under the contract of insurance the company agrees to indemnify the employer regardless of the particular law that may be applied to a given case. The law being the foundation for the insurance contract, a proper conception of the scope of the contract may be had only through familiarity with the legal obligations of the employer.

In our daily talk the terms "master" and "servant" are not popular and have become in a sense obsolete with the disappearance of class distinctions. They are used here strictly in their legal meaning and it is, therefore, well to supply the proper legal definition:

"The relation of master and servant exists between one who *not only* prescribes to the workman the end of his work, but directs or at any moment may direct the means also, or retains the power of controlling the work——

"And one who is engaged not merely in doing work or service for him, but who is in the service usually upon or about the premises of his employer and subject to his direction and control therein and who is generally liable to be dismissed. —"Bouviers' Law Dictionary."

RELATION OF MASTER AND SERVANT

The relation of master and servant is founded upon private contract. According to my conception it is one of the three important relations in life: (1) The relation of the citizen to the State; (2) the relation to the home; (3) the relation to his work. Society, when organized in primitive form, is not especially interested in the private contract of employment entered into between master and servant where both are equal and able to drive a bargain and arrange the terms of employment. Even today will be found some men who resent the idea of State interference with private contract of employment.

We find that with the development of society along complex lines, the organization of capital in corporate form, the organization of labor in trade unions, the development of mechanics, and the application of power machinery to industrial activity, the contract of hire becomes a matter charged with public interest. The State finds it necessary as an exercise of police power to safeguard the health and morals of the workers and especially those of women and children who are regarded as wards of the State. The activity of the State assumes two forms: (1) Prevention of injuries, and (2) compensation for injuries.

With respect to the first, legislation has been enacted in all civilized States for safeguarding machinery, for proper sanitation and light, and for regulating the hours of employment for women and minors.

With respect to the second, the industrial development of society made necessary the introduction of laws in the form of employers' liability and workmen's compensation acts, the effect of which is to make the employer responsible for occupational injuries and to distribute the shock by charging the loss in the form of insurance upon the industry as a whole. At common law, negligence of the employer was the only basis for action. The theory of negligence was justified by good reason and logic and its application was not unduly harsh at a time when industry was conducted in comparatively small shops by small employers with a handful of men who

were mechanics and artizans of a high order competent to exercise proper caution.

As a matter of fact, according to the dictum of the English common law judges, it was good public policy not to compensate the worker for injury resulting from obvious risks for the reason that such compensation might put a premium upon carelessness and thereby endanger the safety of the master and his fellow servants. But towards the close of the eighteenth century there has taken place what is described as an industrial revolution. The small employer gradually disappears from the scene and the struggle between capital on one hand and labor on the other begins to assume large proportions. With it disappears also the personal relation which had previously existed between the master and servant. The development of power-driven machinery brings about an increase in the number and severity of accidents and the common law rule of personal negligence no longer seems to be applicable to the economic conditions of society. This fact was recognized much earlier in the continental countries of Europe than in England or the United States.

EVENTS THAT INFLUENCE LEGISLATION

At this point it may be well to make a brief survey of the important events that have transpired in the nineteenth century and which have influenced legislation on this problem. In the early part of the nineteenth century we still find labor broadly divided into two groups, voluntary and compulsory, compulsory labor being performed by those who were condemned to slavery, or serfdom, which is a modified form of slavery.

In 1861 the growth of liberal ideas had penetrated the Russian Empire and resulted in granting freedom to the Russian peasants. At the same time slavery was abolished in the United States. The German Empire, after the Franco-Prussian war in 1871, began to rise as an important military and industrial power. The workmen of Europe, no longer able to cope individually with their masters, developed strong trade unions and entered upon the era of so-called collective bargaining. The social reformers in Germany advanced the theory that the State should not only protect its citizens against force and fraud, but may extend its functions so as to provide protection to the worker and his family in case of disability or death. There followed the organization of sickness benefit societies which became the forum for the propaganda of advanced social theories. The government, alarmed lest the radical theories advocated may alienate the workers to a point that would endanger existing institutions, introduced a measure in 1886 which, coupled with the already

existing provisions for sickness benefits, created a complete system of social insurance for the protection of the workers against disability and death.

Following this legislation, other States in Europe adopted systems of workmen's compensation with varying benefits and varying methods of insuring the employer's obligation under the law. In England the development has taken a slightly different course, influenced to a large extent by the application of common law doctrines. The English common law judges made a distinction between the rights of an employee and the rights of a stranger, holding fast to the doctrine that the personal negligence of the master is the sole basis for the action. The English common law courts did not allow recovery where the injury was due to the negligence of the fellow servant. They have also implied in the contract a legal fiction that the worker assumes the obvious risk of the employment. Nor was recovery allowed where there was evidence showing contributory negligence on the part of the worker. The doctrine of assumption of risk and fellow servant rule, which were first announced in 1837, resulted in a great many harsh decisions, but remained in force until modified by the employers' liability act of 1880. The introduction of this act has given rise to a form of indemnity insurance with which we are now familiar.

This act, having greatly increased the liability of the employer, insurance became the obvious method for his protection and was destined eventually to play an important role in connection with the system of workmen's compensation. As a matter of interest it may be noted that the Employers' Liability Assurance Corporation was the first company to offer indemnity insurance, in England in 1880 and in the United States in 1886, where the employers' liability act was introduced in Massachusetts. Later on the Fidelity and Casualty, the Travelers and other companies entered the field. The value of this insurance was quickly recognized. Insurance premiums, which in 1887 amounted to $200,000, rose to $8,000,000 in 1901. In 1920 in New York State alone the compensation premiums amounted to $43,000,000, with an indication for the country at large of $154,000,000.

EMPLOYERS' LIABILITY ACT

The modification of the common law by the introduction of the employers' liability act of 1880 satisfied public conscience for a while, but not for very long. After the defeat of the Irish Home Rule Bill and the fall of the Gladstone Government, the Conservative Party, augmented by a large contingent of Liberals under the leadership of Lord Salisbury, introduced and caused the enactment of a limited workmen's

compensation measure in 1896, which provided compensation regardless of fault to a limited number of workers in specified occupations. This measure was regarded at the time as revolutionary in nature and, therefore, experimental, but it managed to survive and was made more comprehensive by parliament in 1907.

The liberalization of the master and servant law in the United States was a slower process. The courts of our States held tenaciously to the doctrine of negligence and to the common law defenses, as I propose to show more concretely in the next lecture. Following the English act of 1880 an employers' liability act was introduced in Alabama in 1885, in Massachusetts in 1887 and in New York in 1902. The social importance of workmen's compensation laws did not gain definite recognition until 1909, when the Wainwright Commission was appointed by Governor Hughes and submitted an elaborate report with the draft of a limited workmen's compensation act.

IVES TEST CASE

The Wainwright Bill, which was enacted in 1910, was declared unconstitutional by the Court of Appeals in the famous case of Ives v. South Buffalo R. R. Co. (201 N. Y., 271), in a unanimous decision written by Judge Werner. The court took the position that the act was in conflict with the Fourteenth Amendment to the Constitution in that it permitted taking property without due process of law. The court recognized the right of the legislature to amend or abolish common law defenses, but did not accede to the idea that it was proper for the legislature to grant compensation without negligence on the part of the defendant. All students of workmen's compensation insurance should read that opinion as it presents a valuable dissertation on the theory of the master's obligation at common law and the proposed rule for compensation without fault. Let me quote what is regarded as an important part of that decision:

> "The right of property rests not upon the commendable impulses of benevolence or charity, nor yet upon the dictates of natural justice. The right has its foundation in the fundamental law. That can be changed by the people, but not by legislatures. * * * If such economic and sociological arguments as are here advanced in support of this statute can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of legislatures, and the guaranties of the constitution are a mere waste of words.

"The argument that the risk to an employee should be borne by the employer because it is inherent in the employment may be economically sound, but it is at war with the legal principle that no employer can be compelled to assume a risk which is inseparable from the work of the employee and which may exist in spite of a degree of care by the employer far greater than may be exacted by the most drastic law. * * * In its final and simple analysis that is taking the property of A and giving it to B, and that can not be done under our constitutions."

Following the constitutional objections expressed in the Ives case, the constitution of the State was amended in 1913 and a compulsory workmen's compensation act passed in 1914, which is the present law, although it has since been amended in a great many respects. The act of 1914 again reached the Court of Appeals in 1915 on the question of constitutionality in the case of Jensen v. Southern Pacific R. R. Co. The problem before the court was to decide whether or not the law was in conflict with the Fourteenth Amendment to the Federal constitution.

CONSTITUTIONALITY UPHELD

As in the Ives case, the defendants contended that the act offended the Fourteenth Amendment for the reason that by its provisions the State in making awards to workmen where the employer was not negligent, confiscated property, taking it without due process of law. The opinion is interesting, chiefly because of the way the Court of Appeals treated this challenge. It is written by Judge Miller, now Governor, who appears to have taken a very practical view of the situation.

In upholding the constitutionality of the act, the court points out in the first place that the act is no longer objectionable because of the amendment to the New York Constitution permitting the legislature to establish a system of compensation for workers, regardless of fault. As to the Federal Constitution, the court held that this is chiefly a matter for the United States Supreme Court and, judging from the decision of that court in the case of Noble State Bank v. Haskell, it predicted that the court, following the same principle, will treat the act as a proper exercise of the police powers of the State. Of course, the court had some difficulty in overcoming the point of view which was expressed in the Ives case, that compensation without negligence amounts to taking property without due process of law.

Judge Miller, however, points out that the act before the court was not the same act that was passed in 1910—that this

act embraces a comprehensive system of insurance and that the shock of loss is distributed by that system and the general burden placed upon industry as a whole. Says the court: "Granted, employers are compelled to insure and that there is in that sense a taking, they insure themselves and their employees from loss, not others. Theoretical taking disappears in practical experience. Every industrial concern, except very large ones, who insure themselves, are forced by conditions, not law, to carry indemnity accident insurance. We should, therefore, consider practical experience as well as theory."

SUSTAINING DECISION

The question as to the constitutionality of the New York act was sustained 1917 by the U. S. Supreme Court in the case of New York Central R. R. Co. v. White (243 U. S., 188). In a sweeping opinion dealing comprehensively with all material objections which have been raised against the statute, the court holds:

"That the rules governing responsibility as between employer and employee are not beyond alteration by legislation in the public interest. No person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit.

"Aside from injuries intentionally self-inflicted for which the statute under consideration affords no compensation, it is plain that the rules of law upon the subject, in their bearing upon the employer's responsibility, are subject to legislative change.

"This court repeatedly has upheld the authority of the States to establish by legislation departures from the fellow-servant rule and other common law rules affecting the employer's liability for personal injuries to the employee.

"Much emphasis is laid upon the criticism that the act creates liability without fault. This is sufficiently answered by what has been said, but we may add that liability without fault is not a novelty in the law. The common law liability of the carrier, of the inn-keeper, of him who employed fire or other dangerous agency or harbored a mischievous animal, was not dependent altogether upon questions of fault or negligence.

"And we recognize that the legislation upon review does measurably limit the freedom of employer and employee to agree respecting the terms of employment, and that it cannot be supported except on the ground that it is a reasonable exercise of the police power of the State. In our opinion it is fairly supportable upon that ground. And for this reason: The subject matter in respect of

which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare.

"No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the Fourteenth Amendment. The denial of a trial by jury is not inconsistent with 'due process'."

COMPULSORY MOVEMENTS

The experience in New York served as a discouragement for other States in the Union to adopt compulsory workmen's compensation acts. Public sentiment, however, in favor of such legislation grew so strong that the subject set many people thinking. As a consequence a very ingenious idea in the form of an elective law was devised so as to make the legislation conform to constitutional principles. Massachusetts and New Jersey were first to adopt the so-called elective system. It was elective in name but not in fact. The scheme consisted in this: An employer was given a choice to adopt a system of workmen's compensation and insure his obligations or to stay out. The employer who stayed out, however, was deprived of his common law defenses, and his obligation at common law thus greatly increased. Of course, the election, at least in theory, had to be given to the employees as well. This was done in the following fashion: In the case of an employer who elected to insure under the workmen's compensation law and posted proper notice to that effect, all the employees in his establishment became subject to the law except those who expressly gave notice of remaining without the act, and with respect to such employees the employer retained his common law defenses. This scheme appeared to work so well that it was adopted in a number of States, some of the elective States subsequently remodeling their acts so as to make them compulsory after a proper amendment to the constitution and after the attitude of the U. S. Supreme Court became definitely known.

MARITIME OCCUPATIONS

The Jensen case, which was brought before the Court of Appeals in 1915 on the constitutional question, reached the U. S. Supreme Court in 1917 (Southern Pacific v. Jensen, 244 U. S., 205). This was a case of a workman who was employed by the Southern Pacific Company, a Kentucky corporation, which also owned and operated a steamship plying between the ports of New York and Galveston. The workman was killed while operating a small electric freight truck

which was used for the loading of cargo on a steamship owned by the railroad company. In this case it was not necessary for the court to pass upon the general question of the constitutionality of the law, this matter having been settled in the case of New York Central Railroad Company v. White, which was decided by this court earlier in the same year. A new question, however, was raised as to whether the New York compensation law was applicable to workers engaged in maritime occupations. The court decided that the compensation law was not applicable, that congress has paramount power to fix and determine the maritime law which shall prevail throughout the country. Said the court:

> "The work of a stevedore in which the deceased was engaging is maritime in its nature; his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction.
>
> * * "Exclusive jurisdiction of all civil cases of admiralty and maritime jurisdiction is vested in the Federal District Court, 'saving to suitors in all cases the right of a common law remedy where the common law is competent to give it'."

This decision was rendered by a divided court, four of the justices dissenting. In consequence of this decision congress enacted an amendment to the judicial code so as to save to suitors in all cases, not only the rights of the common law remedy where the common law is competent to give it, but also "and to claimants the rights and remedies under the workmen's compensation law of any State."

KNICKERBOCKER ICE CO. V. STEWART

The constitutionality of this amendment was attacked in the case of Knickerbocker Ice Company v. Stewart. The court held the amendment as improper and beyond the power of Congress:

> * * "And so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction and remedies for their enforcement, arises from the consttution, as above indicated. The definite object of the grant was to commit direct control to the Federal Government; to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union."

In this case the court also was divided five to four, the same

justices dissenting as have dissented in the Jensen case.

There is now pending in Congress a bill again amending the judicial code so as to give all claimants other than the master or members of the crew of the vessel the remedy provided by the workmen's compensation law of any State, the obvious intent of which is to bring stevedores and other so-called maritime workers, except those actually engaged in the operation of vessels within the compensation acts of the several States. There is, of course, much doubt as to whether this new legislation, if enacted, will satisfy the objections raised in the Jensen and Knickerbocker cases. In view of the fact that the decisions in these cases were rendered by a divided court, there is a possibility that the U. S. Supreme Court as now constituted may revise its previous stand and accept this new legislation as conforming with constitutional requirements.

We have referred to the fact that the relation of master and servant is tied up with the economic, legal and ethical progress of the community. In the field of economics the important questions are those of wages, hours of labor, and the unabridged right of collective bargaining. We have departed so far from the individualistic point of view that serious consideration is now being given to a judicial method of settling such questions. In fact, an attempt of this sort has already been made in Kansas and there is a bill now pending in this State the purpose of which is to provide an Industrial Relations Court with suitable power to enforce its decisions.

In ethics the relation is that expressed in the Golden Rule: There are a great many employers who have accepted that concept as a basis for dealing with their employees. A number of establishments not only carry out the obligations provided by law with respect to safety rules and compensation payments, but are engaging on their own initiative in welfare work with the object of improving the condition of the workers. Group insurance may be cited as an example. Eventually the ethical or moral sense of the community becomes expressed in law. Further progress in industrial relations will be possible with the development of public sentiment expressed in law that will give to those engaged in industry—both capital and labor—the rights to which each side is justly entitled.

May I close this review by the magnificent tribute to the spirit of law expressed in the works of Richard Hooker, an English theologian who lived in the sixteenth century:

> "Her seat is the bosom of God. All things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempt from her power."

THE RESPONSIBILITY OF THE EMPLOYER

Employers' Liability Acts—Common Law Modifications—Former Accident Impressions—Objections to Old Liability Laws—Establishment of Workmen's Compensation System

By H. E. Ryan, General Manager, National Council on Workmen's Compensation Insurance

In previous lectures you have had explained to you the law of negligence and the responsibility of the master for the acts of his servant, or as we would say in the more modern vernacular the responsibility of the employer for the acts of the employe. The general principles of employers' liability have been so thoroughly explained in the previous lectures of this course that it seems quite unnecessary to go over the same ground excepting so far as it may assist us in understanding the significance of the great changes that have been taking place in the past few years. We are presently to take up one of the most important social developments of modern times. I refer to the changes which have come about within the past ten years in the substitution of workmen's compensation for employers' liability, the principle of indemnity for the doctrine of fault.

The previous lecture pointed out the difficulties and social injustice which attended the efforts of employes to recover damages under the common law for injuries sustained in connection with their employment. In particular you will recall that death caused by accident was not actionable for the reason that the death of the person injured terminated the right of action. Also the death of the person against whom an action was brought terminated the action, and the bankruptcy of the person sued left the plaintiff in a helpless position because there was nothing to recover. In addition to these disabilities there were the defenses available to the employer known as the fellow-servant rule, the doctrines of assumption of risk and contributory negligence. The Act of Parliament of 1846, known as Lord Campbell's Act, is significant in the chain of gradual changes which have taken place in the direction of greater liberality to injured employes. By the terms of this act the relatives of the deceased injured employe, whose right of action otherwise would have terminated with his death, acquired a right of action by statute.

COMMON LAW MODIFICATIONS

The common law governing employers' liability has since been modified very considerably by a more liberal attitude on the part

of the courts and also by specific statutory legislation. For example, the doctrine of assumption of risk has been nullified in the case of violations of the employer of safety laws and in place of the doctrine of contributory negligence there has appeared a doctrine of comparative negligence which has afforded relief to employes in cases where there was fault on both sides.

The fellow-servant rule has been modified by introducing the interpretation that certain employments which carry with them authority to superintend and oversee on behalf of the employer the work in which the employe is engaged, should be regarded as equivalent to the actual supervision of the employe by the employer himself. In such cases the supervising employe is deemed to be a vice principal and "Where one servant is placed by his employer in a position of subordination and subject to the orders and control of another, and such inferior servant without fault and while in the discharge of his duties is injured by the negligence of the superior servant, the master is liable for such injury."

Other statutes have been passed nullifying the effect of the fellow-servant rule and all of these modifications have necessarily, though gradually, broken down the defenses available to the employer in the case of suit by an injured employe for damages.

It is a matter of historic interest that the first attempt to modify by statute the common law of employers' liability occurred in England by the passage of the Employers' Liability Act of 1880. The important principle involved in this act was the modification of the fellow-servant rule.

In the United States the first employers' liability law was enacted in Alabama in 1885. Massachusetts shortly followed in 1887. The American practice was largely the result of English precedent. Eventually most of the states adopted employers' liability laws in order to define the extent and nature of the employer's liability to his employe. A classification of these laws according to year of enactment would show that the later laws were the more liberal and that they developed in sympathy with the general trend of law and opinion in other fields of human endeavor.

RELATIONSHIP OF MASTER AND SERVANT

At first the theory of the relationship between master and servant was individualistic. Each man was expected to look out for his own welfare and to take care that he was not injured through any fault of his own. He was also expected not to interfere with the rights of anyone else, but he was not put under any particular obligation to indemnify another for personal injuries that might be sustained save under conditions of extreme negligence on the part of the offender.

At one stage in the development the courts introduced some very dubious reasoning to the effect that the rate of wages paid in the several employments took into consideration the risks involved therein so that the acceptance of employment necessarily carried with it the assumption of the risk. It is important to note that the economic philosophy of individual judges has had a great deal to do with the establishing of precedents which have been relied upon by later courts, but as economic thought broadened out the tendency of the judges was to broaden their decisions correspondingly.

The introduction of complicated machinery and organized industry began to disclose some of the more glaring injustices in the common law principles of employers' liability and there developed a natural desire to remove the limitations upon the employe's right to recover. This accounts for the fact that the history of employers' liability legislation has been one of continuous progress toward the establishment of a more liberal policy for the benefit of the worker.

In this country it has been found that this sort of relief can be brought about more rapidly by legislation than by awaiting the development of court precedent. It would be unnecessarily tiresome to go into the various statutes which have been enacted in the direction of liberalizing the remedies available to the employe. Employers' liability is rapidly becoming a matter of history and we are now chiefly concerned with it because it is the natural background for the subject we are shortly to discuss, namely, workmen's compensation.

IMPRESSIONS CONCERNING ACCIDENTS

Ten or twelve years ago the average foreman or superintendent would have asserted that 95 per cent of the industrial accidents were due to the carelessness of the man injured. Such a statement was actually made to a member of the New York Employers' Liablity Commission and the man who made it was apparently sincere. Without doubt such a statement would not be made in the light of present information. But we are speaking of a time not so very distant when impressions rather than facts prevailed concerning accidents and these impressions were invariably favorable to the employer because he was under no particular responsibility in the matter and reports of accidents were usually colored by his own self-interest or by ignorance of the facts.

Let me recite a few instances which were developed in the Pittsburgh survey in 1907-8. In 410 fatalities 132 were found to be due to the sole or partial responsibility of the victim. Those due to his entire responsibility numbered only 68. The results here are small in numbers, but are quite typical. One hundred and seventeen of the cases were found to be due to nobody's fault

in particular. A brakeman coupling trains on a trestle slipped on some ice and fell through. A mule driver in a mine got down to change a switch. His light went out and in the darkness he was knocked down and killed by one of the mules. This sort of thing is happening all the time and certain of this type of cases may truly be said to be unavoidable under present industrial methods.

In these cases, drawn, to be sure, from the more hazardous trades, 28 per cent are of the unavoidable kind and disprove at once the impression that 95 per cent are due to carelessness. Even the 132 cases in which partial responsibility figures we cannot say there was just carelessness. Some of the victims were merely ignorant—some did not even understand our language and, therefore, could not have appreciated the dangers had they been properly pointed out.

A Hungarian who had been in this country five months was sent to dig a ditch under the railway tracks in a mill yard. He was working between the ties when a train backed down and killed him. He had been told (in English) to work to one side of the rails.

Other cases were due to the carelessness of youth or to the physical health of the worker. A repair man climbing to a high place became suddenly dizzy and fell, although there was a railing to protect him. A brakeman was run down in the yards because of a slight deafness. In 8 out of 410 cases of fatal injury intoxication was found to be the cause.

The point we are coming to is that of the 132 cases in which there was either total or partial responsibility on the part of the victim, 13 cases were due to extreme youth, 4 to physical weakness, 8 to drunkenness, while of the remaining 85 cases there were many in which the so-called carelessness was due to fatigue and efforts to relieve it by resting.

In some cases it was due to an impulse to save time or in some other way to get the job done more expeditiously and not to mere carelessness. Extreme caution in dangerous trades is as unprofessional in the eyes of the men as fear in a soldier.

So we might go on analyzing the real causes of work-accidents and in the end we should find that not 95 per cent but less than a third of the cases we are considering were due to the carelessness of the man injured. In similar fashion by giving attention to the actual facts in individual cases we should find only a very small percentage that are due to the carelessness of a fellow worker or to the negligence of the employer. The point of real significance is that industry itself is mainly responsible. And our present belief, which has been worked into the social and economic policy of the time, is that industry should pay.

EMPLOYERS' LIABILITY OBJECTIONS

What then are the objections to the employers' liability system? Consider first the criticism from the employee's standpoint. In the first place we have the fact that a large proportion of industrial accidents are in no way compensated. It has been determined that for every 8 accidents that occurred under the employers' liability system, only one resulted in any payment to those who were injured. Also that the amounts paid in the few cases in which there was recovery bore no relation whatever to the needs of the injured person.

Take, for example, the worst cases—where the accident resulted in death. Figures established by the New York Employers' Liability Commission, in 1910, show that only from one-fourth to one-third of all fatal accidents were compensated. For the most part those cases in which payment was eventually received, often after prolonged and expensive court proceedings, the amounts recovered were absurdly small, ranging from $2,000 to $100 or less in all but about 10 per cent of the cases. There were numerous cases in which the result of an accident was to incapacitate the worker for the remainder of his life and where the amount recovered seldom exceeded $500.

From these few illustrations, which might be multiplied indefinitely from the facts established by various investigators in all parts of the United States is it not perfectly clear that the bulk of accident loss had to be borne by the injured workmen and their families?

Bear in mind also that in order to obtain damages it was necessary under the employers' liability system for the claimant to engage in expensive litigation which absorbed a large part of the amount of damages claimed. The system gave rise to a class of unscrupulous lawyers who accepted cases on a percentage basis—the so-called ambulance chasers—whose usual fee might vary anywhere from a small percentage to as high as 50 per cent of the claim.

Finally, we have the deplorable fact that litigation is long drawn out and while the injured man is awaiting relief and a final disposition of his case he and his dependents must live, and in many cases are obliged to incur heavy expenses for medical and surgical treatment.

CRITICISM ON PART OF EMPLOYER

These then are the valid objections to the liability system from the standpoint of the employee. What are the criticisms that may be raised by the employer who might be supposed to gain through the obstacles placed in the path of the employee to make recovery difficult? In the first place he must defend those rights which

are his under the law. Such defense is expensive and wasteful and goes largely to support a third party—the attorney who acts in the employer's behalf for the protection of his legal rights. The sums thus spent are a dead loss so far as concerns the affording of relief for the injured person.

Whatever the rights and wrongs may be in particular cases the liability system promotes ill-will of employee toward employer. In any event the employee feels he is entitled to be compensated. The very least damage that such a situation can create is lowered industrial efficiency. Carried far enough it might even result in revolution for it would be hard for us in America to imagine any political oppression so generally burdensome as the economic incubus of uncompensated industrial accidents.

Then there is the criticism of society—of the public at large. Any social system which operates to the disadvantage of such important classes as are represented by employer and employee also affects more or less the entire body politic. We have specific objections that are even more cogent. Litigation produces waste for the cost of maintaining the courts is largely made up of negligence cases. Also, injuries which are not fully compensated create a condition of dependency which has to be faced in the form of poor relief and is thus a burden upon the people as a whole. Then, too, we should not forget that the incentives to win lawsuits are unwholesome and directly encourage such bad moral influences as perjury and its various ramifications, to say nothing of the pauperization of those who might otherwise remain useful and decent citizens.

This in brief is the case against employers' liability. We shall presently inquire into the history and development of the remedy, in which development the United States unhappily was a follower, not a leader. Not all of the States have yet abandoned the old system, but within the short space of the past ten years most of our important industrial commonwealths have seen the light and have substituted for the vicious doctrine of fault the just principle of indemnity.

WORKMEN'S COMPENSATION SYSTEM

We are now about ready to consider the subject of workmen's compensation. It seems unnecessary to go further into employers' liability for you have a good background for going ahead and we should commence to introduce workmen's compensation at this time in order to cover the subject in the two lectures at our disposal.

Workmen's compensation is the indemnification by industry, without regard to fault, for loss of earnings sustained by a worker by reason of bodily injuries (including death resulting therefrom) arising out of his employment. When we say "by

industry" we mean that the cost of paying the indemnity or "benefits" shall be paid as a part of the normal running expenses of industry. In actual practice the funds from which these benefits are paid are collected in various ways—chiefly in the form of insurance premiums. These premiums go to the various insurance carriers, which in turn assume the obligation of the individual employer. In certain special cases the employer himself makes the payment of benefits directly to the injured employee or to his dependents and so becomes what is called a self-insurer.

The change which has taken place in the discarding of employers' liability and the adoption of workmen's compensation reflects a radical change in public sentiment in the direction of greater social justice. The general introduction of machinery in industry has brought with it a certain measure of accident risk that was unknown in the days of handicraft. By far the greatest proportion of industrial accidents is due to the inherent risk of the industry and cannot fairly be attributed to the negligence of either employer or employee. Moreover, the complex character of industrial organization as it exists today makes it almost impossible to discover any real element of personal responsibility for accidents on the part of the employer.

Modern industry is highly impersonal and the assumption of risk, a necessary and normal feature of industrial activity. We have come, in the past few years, to a better understanding of these changed relationships and now recognize that the damage which industry does to the human machine is as certainly a charge that industry should bear as is the damage sustained by its mechanical appliances. Machinery cannot be operated without men and a crippled man is a hindrance to industry, just as a broken machine requires to be stopped and laid up for repairs. We may not agree that all accidents should be paid for by industry and in strict theory this would be true. But the determination of fault is so difficult and unsatisfactory that practical considerations tell us that if any accidents are to be indemnified then the same principle must be extended to all accidents.

OBJECTIONS SOMETIMES RAISED

Objection is sometimes raised against the system of workmen's compensation because it causes the employee in a given case to receive less in benefits than he could probably recover by a legal suit against his employer. This objection is specious and in the majority of cases does not apply. It disregards the beneficial effects of the workmen's compensation system as a whole. No system can be fairly judged by its application to isolated cases. All our experience with workmen's compensation teaches that it is in general humane and equitable. In a certain sense workmen's

compensation is a form of insurance for it substitutes a certainty for an uncertainty. That is precisely what insurance does. By the payment of a fixed and certain premium we may purchase insurance against the occurrence of losses which would have uncertain and perhaps disastrous consequences. Under the workmen's compensation system various types of injury are set down in the law in definite terms, together with the amount to be paid the injured man or his dependents. In addition provision is made for necessary medical and surgical treatment with a view to rehabilitation of the worker and restoring his ability to resume a gainful occupation. Recovery of the indemnity is made as prompt and as simple as possible; delays are practically eliminated. Moreover, direct incentives are offered the employer to become active in the campaign against accidents. It is only necessary to mention these facts to demonstrate the vast superiority of the new system over the old.

It is enough in this lecture to point out in this general way what such a law aims to accomplish. And since we are chiefly concerned with workmen's compensation in its relation to the business of insurance we may with propriety omit some of the more philosophical aspects of the subject and accept it as an accomplished fact, for while it is of comparatively recent adoption in the United States it has had nearly forty years of history in Europe. No commonwealth having adopted the principle of workmen's compensation has abandoned it.

RECOVERY OF DAMAGES FOR INJURY

Historical Development of Workmen's Compensation Acts—Essential Provisions of Law—Methods of Administration—Rating a Risk—Beneficent Effect of Law

By H. E. Ryan, General Manager, National Council on Workmen's Compensation Insurance

In our criticism of the employers liability system we have emphasized the obstacles which had to be met by the employee in recovering damages for personal injuries. The relief provided under the civil code in continental Europe was more readily obtainable than that permitted under the English common law, but it was nevertheless, necessary for the person aggrieved to prove fault or negligence on the part of the defendant in accordance with the rules of evidence prevailing in the courts of each particular country. The gradual transition from the older liability concept to the idea of compensation should be studied separately for each of the countries, a task which is beyond the scope of this course, but is well worth while if a complete picture of the development of workmen's compensation throughout the civilized world is desired.

The principle of systematic compensation for loss due to industrial accidents has been known in Europe for over a century, earliest examples being found in the mining industries in Germany and Austria. These industries were the first to be operated on a large scale of production and with large numbers of employees, and which in addition had a high degree of occupational risk. It was, therefore, quite natural that attempts should be made to provide in a definite manner for the relief of the distress caused by accidental injuries or other physical disability. Similar relief systems were developed at an early date in the navigation industry and in railway transportation. The growth of the factory system and the rapid introduction of machinery which took place in Europe following the Napoleonic wars brought about a change in those personal relations of employer and workman which had been characteristic of the old industrial order. In some European countries accident insurance legislation has been supplemented by sickness, old age and invalidity relief. All of these rest upon a conception of society which is in sharp contrast to the individualistic principle.

EUROPEAN DEVELOPMENT

Following the establishment of the German Empire in 1870 the government devoted serious attention to the problems arising

out of industrial accidents, and in 1871 a liability act was adopted which extended the provisions of an earlier act of 1838, known as the Railroad Act and made the employer liable for accidents if negligence could be proved to have been due to a vice principal. This act, however, proved unsatisfactory because it left the burden of proof on the employee and did not give relief in the case of accidents due to the negligence of a fellow-servant or to the risk of the occupation. In the years following its adoption the idea became fixed in the public mind that there is inexcusable cruelty in throwing the burden of industrial accidents entirely upon the individuals themselves. It was seen that many of the industries were inherently a direct and constant cause of a vast number of accidents. This gave rise to the consciousness of a group or trade cause as opposed to the idea of individual cause. The development of statistical facts respecting accidents awakened public opinion to such an extent that it came to be widely recognized that responsibility for industrial accidents was really three-fold, viz:—(1), individual; (2), attributable to specific industries; (3), that of society.

The movement for a compulsory scheme of workmen's compensation insurance urged by the socialist party was finally sponsored by Bismarck and Emperor William I and became effective in 1884. Careful study of the industrial accidents which took place after the establishment of the insurance system developed the following results. Out of 106,000 accidents occurring among industrial workers the number of persons whose incapacity for work lasted more than thirteen weeks was 15,970, the number of accidents caused by machines being 4,287 or about 27 per cent of the entire number. The following table shows the causes to which these 15,970 of the more important accidents are attributed:

1—Fault of the employer		19.76%
2—Fault of the injured		
(a) Awkwardness or inattention	16.49%	
(b) Other causes	9.15%	25.64%
3—Fault of both employer and injured		4.45%
4—Fault of third person—particularly coal laborer		3.28%
5—No fault which can be assigned		3.47%
6—Inevitable risk when at work		43.40%

Observe that in 75 per cent of the causes there was no fault on the part of the injured and in 16 per cent additional cases the so-called fault was due to mere awkwardness or inattention.

SPREAD OF SYSTEM

The establishment of the workmen's insurance scheme by Germany naturally gave great impetus to the movement throughout Europe. Austria adopted a compensation system in 1887 and Norway in 1894. By 1921 fifty foreign countries and provinces

had introduced some form of compensation for industrial accidents. The European acts may be roughly grouped under three heads:

1—Systems of pure compensation in which the employer is required to provide compensation according to a scale specified in the law without obligation to insure or guarantee that the compensation will be available when needed. This group includes Belgium, Denmark, France, Great Britain, Greece, Russia and Spain. A parliamentary committee in Great Britain last year recommended that the system in force in that country be altered so as to provide for compulsory insurance, but at this moment the proposal has not been acted upon.

2—Systems in which the law establishes the individual responsibility of employers and in addition requires them to take out insurance either in recognized private companies or in a state institution, or to furnish a guarantee sufficient to cover his responsibility. In this group may be placed Finland, Italy and the Netherlands.

3—Systems in which the law requires the employer to insure in a specified manner or in a specified institution. This group includes Austria, Germany, Hungary, Luxemburg and Norway.

FIRST UNITED STATES SURVEY

The United States in 1893 made an official survey of the European systems and published the result as a special report of the Bureau of Labor. (Fourth special report of the United States Commissioner of Labor. Compulsory Insurance in Germany and other European countries, 1893.) Nothing immediate resulted from this investigation. The 24th annual report of the United States Commissioner of Labor, published in 1909, records the appointment by eight American states and by the federal government, of commissions to study methods and compensating workmen for disability incurred in the course of their employment. Thus, in 1909, the United States was still studying the subject.

In 1910 the State of New York adopted a form of compulsory workmen's compensation law which was held unconstitutional in the case of Ives vs. South Buffalo Railway. To overcome this difficulty the state constitution was amended in 1913 and a new compensation law was enacted becoming effective July 1, 1914. The movement, once begun in this country, has proceeded at a rapid rate until now we have workmen's compensation laws in all but five states, namely, Florida, Mississippi, North Carolina, South Carolina and Arkansas. All this has happened within the brief space of about ten years.

The means adopted in New York for overcoming the effect of the Ives decision is interesting enough to warrant special men-

tion. I refer to the constitutional amendment which made possible the adoption of a compulsory compensation law. The amendment reads as follows:

"ARTICLE I.—Safety of workmen—Compensation for injuries.

"Section 19. Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; of the payment, either by employers, or by employers and employees or otherwise, either directly or through a State or other system of insurance or otherwise, of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination, and settlement, with or without trial by jury, of issues which may arise under such legislation; or to provide that the right of such compensation and remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for death shall not exceed a fixed or determinable sum: Provided, That all moneys paid by an employer to his employees or their legal representatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer.

"Adopted November 4, 1913."

MEETING LEGAL REQUIREMENTS

Workmen's compensation laws in the United States have been amply upheld and every essential feature of such laws has been approved by the highest courts. The history of the litigation which has served to establish these laws is well summarized in Bulletin No. 272 issued by the United States Department of Labor, January, 1921. It is not within our scope to consider this interesting record, but it is well to have in mind this source of information should you desire to have a broad understanding of the constitutional questions which have been raised and settled.

After the Ives decision the states which were anxious to adopt compensation laws being mindful of the constitutional objections that had been found began to adopt legislation of the elective type. An elective compensation law gives to the employer the option of accepting or rejecting the compensation act. Should he reject it the common law defenses are removed and he is subjected to a greater degree of liability. Under a compulsory law the employer is definitely required to accept the act and to pro-

vide compensation. Several of the states have amended their constitutions in order that compensation laws of the compulsory type might be enacted. The distinction between these two types of law is in practice unimportant as the employer invariably elects to come under the provisions of the compensation act rather than assume full liability with the common law defenses abrogated. For all practical purposes workmen's compensation in the United States is compulsory upon the employer.

REQUIREMENT OF INSURANCE

Another way of viewing compensation laws is with reference to the requirement of insurance. Most of the states do require insurance, in some form, to be carried—a few do not. The requirement of insurance does not necessarily follow the provision for compulsory compensation. In general it is correct to say that insurance is required in all states excepting Alabama, Arizona, Kansas and the territory of Alaska. Insurance as used in this connection includes any form of security of proof of responsibility which may be required of the employer by law.

The state laws differ greatly with respect to the forms of insurance. In some the state provides a carrier known as the State Fund which may be the exclusive form of insurance available or may be in competition with private carriers. In others the private carriers are the only medium provided. Private insurance is permitted in 38 states and territories. In six states there are competitive state funds, the most important being New York, Pennsylvania and California. In eight the state fund is exclusive and of these the Ohio Fund is the most important. In New York the forms of insurance permitted are stock and mutual, state fund and self-insurance. Theoretically the choice which may thus be exercised by the employer enables him to select the form of insurance which he may prefer. Practically he is eagerly sought by the competing carriers and his decision rests upon the skill with which the case of each contender for his patronage is presented and upon the service which he may be given to expect.

ESSENTIAL PROVISIONS OF LAW

Coming now to the more specific aspects of our subject we should consider first the essential provisions of a workmen's compensation law and some of the features of its actual operation. A typical workmen's compensation law consists of the following principal parts:

1—A definition of its scope: This includes a statement of the employments intended to be included, a description of the injuries covered (usually embraced in the phrase "arising out of and in the course of the employment"), an enumeration of beneficiaries and a statement excluding the payment of benefits for a

certain number of days known as the "waiting period." This period is generally from one week to two weeks and is intended to prevent malingering as well as to reduce expense in administering trivial claims.

2—A schedule of benefits: This is the vital part of the law and defines the extent of recovery for disability or death resulting from accidental injury. The various types of accidents and their presumed relative importance are set forth in detail according as the benefit payable is for death, permanent disability, either total or partial, or temporary disability, total or partial.

Provision is also made for the payment of medical, surgical and hospital expenses including necessary nursing and apparatus. Certain limitations are, of course, imposed upon the benefits. It is customary to express the benefits as a percentage of the wage with downward and upward fixed limits. In New York, for example, the following provisions occur:

a—For total disability—66 2/3 per cent of average weekly wages limited, however, to $20 maximum and $8 minimum or to full wages if less than $8. If the disability is permanent the benefit continues for life; if temporary it is subject to a maximum of $3,500 in the aggregate.

b—For loss of a hand—66 2/3 per cent of average weekly wages for a period of 244 weeks subject to the $8 and $20 limits as above.

c—For death—30 per cent of wages to wife during widowhood with bonus of two years benefits upon remarriage. Ten per cent additional for each child under eighteen, or if there is no widow 15 per cent to each child. Certain other benefits to other dependents.

d—Surgical and hospital aid as required up to 60 days, but longer if ordered by the industrial commission.

COMPARING VALUE OF LAWS

Since no two compensation laws are exactly alike it is necessary in comparing their relative value to concentrate attention upon the more important features. The chief point to consider is the scope, that is to say, the industries covered, the proportion of persons compensated and the relative number of those who are excluded. This is the most important consideration from the standpoint of the worker for unless his occupation is included within the scope of the act it makes little difference to him that the system in force in his state provides liberal benefits and a proper administrative system for enforcement of the law.

No compensation law covers all employments. The nearest approach to such a condition is found in New Jersey where the only exclusions are casual laborers, elective public officials and public officials and public employees receiving in excess of $1,200 per annum salary. Speaking generally the most usual exclusions

from the coverage of a workmen's compensation law are: (1) Non-hazardous employments; (2) agriculture; (3) domestic service; (4) public employees; (5) casual laborers; (6) employments not conducted for pecuniary gain and (7) exemptions based upon the number of employees of the employer. In New York, for instance, an employer having less than four workmen in non-hazardous employment is technically not subject to the workmen's compensation law; in practice this distinction has very largely disappeared.

MARITIME EMPLOYEES

Workers engaged in maritime employments are still without the protection of workmen's compensation laws. Several attempts have been made by the states to enact legislation of this kind, but each time the U. S. Supreme Court has held that only the congress is competent to enact legislation affecting workers who are subject to the law of admiralty. At the present time there are pending in congress measures which seek to remedy this situation and further attempts are being made by the state legislatures to enable employers and employees, by mutually waiving their rights under admiralty law to substitute compensation for liability. The present situation is, of course, extremely unsatisfactory, both for employer and employee and makes the administration of insurance unsatisfactory and difficult since there is no legal means of enforcing the payment of workmen's compensation except as purely voluntary matter in which all parties in interest must acquiesce.

ADMINISTRATION OF LAW

For the administration of workmen's compensation laws various means have been adopted. The plan which appears to have the most general support is the commission form of administration. The function of these industrial commissions or boards is primarily to enforce the provisions of the law, to arbitrate disputes and see that justice is done. The procedure under which they work is exceedingly simple when compared with that of the courts. In the actual settlement of claims delays are practically eliminated; cases are disposed of with comparative ease and absence of undue formality. Reports of accidents are rendered to the commission and afford the basis for verifying the subsequent payment of compensation. In certain states the compensation settlements are collected through the filing of a claim with the inferior courts.

The place which insurance occupies in workmen's compensation requires little explanation. The employer by the payment of a consideration transfers his obligation to an authorized insurance carrier which then proceeds to perform in his behalf all of the

services required by law with respect to the furnishing of medical and surgical aid and the payment of benefits. The obligation assumed by the insurance carrier as regards workmen's compensation is expressed in the insurance contract in the following manner:

"The A. B. Casualty Company does hereby agree

"I (a) To pay promptly to any person entitled thereto, under the workmen's compensation law and in the manner therein provided, the entire amount of any sum due, and all instalments thereof as they became due.

"1. To such person because of the obligation for compensation for any such injury imposed upon or accepted by this employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this policy, each of which statutes is herein referred to as the workmen's compensation law, and

"(2) For the benefit of such person the proper cost of whatever medical, surgical, nurse or hospital services, medical or surgical apparatus or appliances and medicines, or, in the event of fatal injury, whatever funeral expenses are required by the provisions of such workmen's compensation law.

"It is agreed that all of the provisions of each Workmen's compensation law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this policy, while this policy shall remain in force."

In addition to the foregoing obligation the insurance carrier assumes the underlying liability imposed upon the employer by law for damages in the event that the workman's compensation law shall be found not to apply to particular injuries. The carrier further agrees to serve the employer by the inspection of work places and to recommend improvements which may operate to reduce the number or severity of injuries, and also to investigate all accidents and settle resulting claims.

INDUSTRY BEARS COST

The cost of workmen's compensation is distributed over industry by fixing of premium rates which are designed to measure relative hazards. Each employer's risk is assigned to a classification which carries an appropriate premium rate. In this way each industry is caused to contribute its proper share of the aggregate compensation cost.

Through the concerted action of insurance carriers and state department officials, a national system of ratemaking has been developed. The carriers submit their classified experience to a central organization (The National Council on Workmen's Com-

pensation Insurance) which is supported by stock, mutual, state fund and reciprocal insurers. Central committees representative of these classes of carriers determine from such experience the premium rates according to state and industry class.

There is still much divergence in the compensation benefits of the several states so that the problem of ratemaking is excedingly complicated. It requires the application of the combined knowledge of underwriters, actuaries and engineers to produce a manual of rates and as conditions are constantly changing the rates undergo continuous modification. The premium rates are applied to the payroll of the employer according to the degree of hazard in the industry. In times when wages are low the rates are relatively high and when wages are on the increase it is necessary to make downward revisions of the manual rates. Another disturbing element is the constant change in the benefit schedules of the state laws. Each legislative season brings with it numerous proposals for amending the compensation scales, generally upward, and a fair condition of stability has not yet been reached.

RATING A RISK

After classification of a given employer according to industry the carrier proceeds to determine the relative excellence of the risk in comparison with others of the same class. In states where there is regulation of the premium rates this process of rating specific risks is effected through a central rating office. No matter who does this work the principle is the same. Two aspects of the hazard are considered, the physical and the personnel. The physical aspect is judged by schedule rating, a process which compares the mechanical hazards of the risks with the average of the class. The rating inspector visits the plant and makes note of all matters bearing upon the hazard from a strictly mechanical standpoint, such machines, belts, shafting, stairways, boilers, engines, electrical equipment, etc. His report furnishes the facts necessary to determine whether the risk is entitled to a lower or a higher rate than the average or manual rate.

The personnel aspect of the risk includes all items which cannot be measured by a schedule rating inspection such as the attitude of the employer and his foremen, superintendents, etc., the character of the employees, their intelligence, personal habits, knowledge of the language and appreciation of hazards. These elements of risk are too intangible for schedule measurement and so must be attacked in some other way. This is done by applying the principle of experience rating which, in its simplest terms, is a means of using the past accident record of the risk as an indication of the appropriate rate. This record is compared

with the experience of other risks of the same class and the rate which results depends upon whether the risk experience is better or worse than the class average. These two rating plans are the direct means of showing the employer how he may, through accident prevention, save insurance cost and may be looked upon as being indirectly instruments of social betterment.

BENEFICENT EFFECT OF LAW

The question is often asked whether workmen's compensation has really done much to improve working conditions. For a number of years prior to the enactment of the first compensation laws there had been upon the statute books of many states laws requiring safety devices and the observance of safety regulations, but the extent and effectiveness of these laws in accident prevention were rather negative. So far as could be ascertained these laws were not producing any appreciable reduction in the number of accidents and it was more or less taken for granted that perhaps the irreducible minimum had been reached.

The enactment of workmen's compensation laws, which place a financial burden upon the employer in proportion to his accident rate, provided a new stimulus for preventing accidents. Safety regulations were stiffened and insurance companies entered upon a new campaign of accident prevention in which many of the large manufacturing establishments co-operated. The new attitude that has developed toward the idea of prevention can have only positive results. The opportunities for insurance service in this important field are vast and insurance carriers, in their competition for patronage, are availing themselves of it.

In passing let me quote from a report which appeared in a New York newspaper about two weeks ago. This report shows what has been accomplished by a large industrial enterprise since 1913 in reducing the accident rate.

"AMERICAN SMELTING CUTS ACCIDENTS 76%

"Disabling Injuries Only 63 in 1,000 Workers Last Year, Against 264 Hurt in 1913.

"BIG SAVING IN INSURANCE

"President Guggenheim Says Work Has Been Important to Efficiency and Satisfaction.

"Simon Guggenheim, president of the American Smelting and Refining Corporation, recently issued a report to stockholders on the results of accident prevention work.

" 'The figures show that the policy pursued by the company in the education of its employes along safety lines has been

efficient, economic and, from the humane standpoint, a great achievement, in that it largely removed our industry from the extra-hazardous domain to that of a safe and healthful pursuit,' said Mr. Guggenheim.

"The figures issued were as follows:

Year	Number Disabling Accidents.	Rate per 1,000 Employes per Ann.
1913	2,746	264
1914	2,261	233
1915	2,101	215
1916	2,702	197
1917	2,253	149
1918	1,405	107
1919	788	88
1920	660	80
1921	318	63

Decrease in accident rate from 1913 equal to 76%.

"'Had the accident rate not decreased from the rate of 1913 the Employer's Liability Fund Expenditures would have totaled $2,454,133 instead of $1,073,151, an increase over actual expenditure of $1,380,982,' said Mr. Guggenheim. 'As the amount spent for accident prevention was $602,124, a probable saving is thus shown in the cost of accidents of $778,858. And this does not take into account the gain on the humane side of the ledger."

Such remarkable improvements as these are attributable to workmen's compensation laws, which have made accidents unprofitable and their prevention its own reward.

THE OLDEST FORM OF CASUALTY INSURANCE

Early History of Accident and Health Underwriting—Development of Contracts—Variety of Health Policies—Non-Cancellable Form

By Charles Bellinger, of W. L. Perrin & Son, New York City General Agents of Continental Casualty

Accident insurance, though the oldest of the casualty lines, is the most refractory. The speakers that have preceded me, dealing with branches of our business, each of which have to a large extent become standardized, could speak in general terms of policy contracts, practices, court decisions, and the like. Where the forms are not actually uniform, the nature of the contingency insured against or the necessities of the insurers have brought about a general similarity so that what is said of one company is true substantially of all. Each specialist has put through their paces before you sleek, well-trained horses that you may find today just as they were exhibited.

But accident insurance never has been broken into harness. Almost nothing is standard—neither rates, nor forms, not underwriting practices. And its past is as various and as vigorous as its present. This is the unruly bronci that the Insurance Society has asked me to introduce to you. I will do the best I can, but you must be prepared for anything. After we disperse today, the first thing you hear may be the announcement that some company has added a new "best ever" policy or that some other company has decided no longer to write any at all. To describe briefly what accident and health insurance is today and to trace the steps in its development is as baffling an undertaking as it would be to portray a nation and outline its history. In either case there is ample room for sincere differences of opinion as to what present features are important or permanent or typical, and for greater differences as to the just characterization and classification of the influence that have caused its growth. Our task will be simplified if we make some distinctions and specialize somewhat in our investigation.

To the outsider "accident insurance" is a vague term sometimes extended to cover liability, or workmen's compensation, or even steam boiler explosion insurance, since in each of these the results of "accidents" are insured against. Consequently it has become necessary to speak of "personal accident insurance" to distinguish clearly that branch of casualty insurance that pays

to the purchaser of insurance indemnities for the results of bodily injuries suffered by himself.

MANY FORMS OF PROTECTION

A rapid survey of our field discloses a variety of types of this form of protection. Stock companies, mutual associations, assessment associations, and fraternal orders offer contracts of personal accident and health insurance. In the early days more business was written on the non-stock plans than by the stock companies. In 1893 one mutual accident association doing a countrywide business among business and professional men generally had attained a premium income of $1,000,000 annually. The sudden and complete failure of that company in 1894 may not have been due to intrinsic faults in the mutual system. Nevertheless, soon afterward many mutual companies changed to the stock plan and since that time no mutual doing a general business has attained large proportions. In 1920 only 8 per cent. of the total premiums were collected by non-stock organizations. The traveling men's associations limit themselves to the risks of a given class of occupations.

We will deal only with the business of stock companies. The policies issued by these companies divide themselves into four chief classes, namely: commercial or regular, non-cancellable or guaranteed renewable, industrial or monthly-pay, ticket, coupon, and other limited forms.

We will further restrict ourselves to a consideration of the first two classes. Sometimes the line of demarcation between these and the others may not be strictly drawn, and unavoidably some of the figures we will quote will be inclusive of these other classes.

EARLY HISTORY OF BUSINESS

A brief statement of the origin and early history of the business may be of interest. As in fire, life, liability, and other branches, accident insurance originated in England. Americans were not far behind, but imported little more than the germ idea. In 1849 the Railway Passengers' Assurance Company of London began to issue insurance tickets providing indemnities for death and certain specified injuries resulting from railway accidents during a stated trip by train. In 1850 The Franklin Health Assurance Company and the Haverhill Health Insurance Company were authorized by the Massachusetts Legislature to issue accident policies. The growth was slow. Many companies came and went; few of the early companies weathered the storms incident to the beginning of the voyage. After twenty-five years we find (in 1875) only three stock companies reporting to the New York insurance department. By 1895 these had grown to nine, which collected $5,600,000 in premiums, and by 1900 to fourteen,

collecting $6,500,000 in premiums. From this time on there was a rapid growth, due largely to the introduction of health insurance. In 1920 over $90,000,000 in premiums were collected by the stock companies alone.

It would be of little interest to recite tables of statistics; these are accessible in the library of the Insurance Society for those members that desire to study them. To narrate the rise (and, occasionally, the fall) of individual companies would lead us far afield, for few companies write the personal accident line exclusively. The many successes and the few failures have been due to the operations of several departments and the effect of this one line on the general results would be difficult to distinguish.

There is, however, one trail that will take us through the unassorted facts and happenings of the last thirty years. The continuing problem has been the devising of policy forms that would prove both attractive and profitable. With no traditions, little legislative interference, sharp competition, and an extremely varied demand there was a great range of endeavor in this matter And the evolution of the business may best be traced by stating the trend of those policy changes.

DEVELOPMENT OF EARLY '90'S

In the early '90's may be located a distinct turning point in the progress of the business. The desirability and importance of the protection began to be recognized generally. Several companies had established themselves in the public's confidence. The folly of expecting substantial protection from the investment of a small premium was becoming plain. Companies began to charge and to collect substantial premiums for substantial insurance.

By this time, too, the development of the policy forms along a negative line had culminated. The policies first issued were of the briefest conceivable. They consisted of but a few paragraphs promising to pay a stated sum for a limited period in the event of disability caused by accident. Such safe-guards as careful definitions of the contingencies insured against or requirements as to notice, filing of proofs, etc., were entirely absent. Very promptly there was a succession of unreasonable and fraudulent attempts to stretch the loose phraseology to cover happenings never contemplated and not taken into account in the fixing of the premium. Underwriters learned that an off-hand promise to pay indemnity for death or disability from accidents was neither safe nor as clear as it seemed. They found that the pivotal word accident is so flexible and inclusive that its unguarded use opened the door to claims based on almost every kind of a disappointing or damaging occurrence.

In the insuring clause of the policy the word was promptly reenforced by the added words "external" and "violent." In addition exceptions and exclusions were added to the general conditions of the policy one by one as a new perversion of the purpose of the insurance was attempted or as some unexpected court decision expanded the meaning of the insuring clause. It must be confessed that the restriction of the policy did not stop with the closing of opportunities for unfair and fraudulent claims. It became a practice to add a condition eliminating from the protection expensive or troublesome classes of claims that were clearly accidental. On the other hand, the policy that began simply by insuring against disability from railroad accidents for a specified trip, had been improved. Accidents generally were covered and a single policy was written to cover all the risks for a period of a year. Accidental loss of life, hands, feet, and eyes, were included, lump sums being paid for these contingencies usually on the basis of two-hundred times the weekly indemnity for loss of life, or two members, one-third of that amount for loss of one hand or one foot, and one-fifth for the loss of one eye. At this stage the weekly indemnity was paid for total disability only and for a limited period, usually twenty-six weeks.

An examination of the policy forms offered from this time on will disclose a well-defined movement along two lines, which attained full headway by 1894. The previous tendency to make the cover narrower was definitely checked. On the other hand, the policies were made more attractive. The causation may be plainly discerned. Different factors combined to make necessary a larger premium charge than had heretofore been asked. The broadening of the contract and the education of insurers in the making of claims increased the loss cost and the necessary agency and other expenses of the stock plan had to be provided for. Growing competition, too, made the struggle for business keener. For many years thereafter new policy after new policy, each more attractive than the last, came from the printing presses of the companies. Cherished exceptions and defenses were thrown overboard. Thirty years ago nearly every accident policy excluded entirely the following accidental bodily injuries:

Where there was no external and visible mark of injury upon the body (the body itself in case of death not to be deemed such mark); voluntary exposure to unnecessary danger or to obvious risk of injury; intentional injuries inflicted by other persons; received while violating law or the rules of a corporation; received while upon any railway, roadbed, or right-of-way; received while under the influence of or in consequence of having been under the influence of intoxicants, or narcotics; resulting from war or riot; resulting from the use of fire-arms by the insured

or any other person; hernia; resulting from poison or anything else accidentally or otherwise taken, administered, absorbed, or inhaled, caused or contributed to by disease or bodily infirmity; resulting from medical or surgical treatment; disappearance; while entering or attempting to enter or leave a moving conveyance.

REFORMATION OF CONTRACTS

There were also total forfeiture for minor lapses in the giving of notice, formidable formalities in the filing of proofs of loss, etc. The policies were not uniform, so that an exception maintained by one company would be missing from the policies of others. The amenities between companies were often forgotten. Pointed and even violent attacks in circulars were made by the companies on each other's contracts. If a company secured a favorable court decision on some exception, that fact was blazoned abroad by some competitor without any pretense of delicacy or good feeling. In self-defense the restriction attacked was often striken out and then the attacker in turn was forced to strengthen some vulnerable point in his own position. As a result of the new movement the long paragraph of exceptions was very rapidly reduced to a few lines and only such essential exclusions as intentional self-destruction were retained. Many companies abandoned the words "external" and "violent" and relied in the insuring clause simply on the specification that the injuries must be by accidental means. An interesting indication both of the extreme to which this process was carried and of the calm optimism as to future world conditions, is the fact that the exclusion of war risks went with the rest. As a result when the World War came most companies' policies were without any defense against the "accidents" of actual warfare.

The sale of the policies was accelerated not only by the removal of objectionable clauses but also by the addition of entirely new benefits. Now began the invention of so-called frills. A New York company devised an endorsement providing double payments for the accidents of travel. The hazards of railroad and steamboat have always been prominent in the lay mind; it was this hazard that first suggested accident insurance and to this the policies were first confined. It was consistent with the sound selling principle of meeting a buyers' demand that this phase of the protection was emphasized in the new manner. At first an additional charge of 50 per cent. of the original premium was made for this endorsement, 25 per cent. for the death hazard and 25 per cent. for the disability hazard. Very soon the double benefit clause was incorporated in the policy itself and though the terms were broadened, the additional premium charge was very much reduced. Because the new form "combined" the

doubling rider with the old (or "straight") form policy, the new form was named the combination policy. Today straight policies are obsolete except for risks in occupations where the combination form is obviously inappropriate.

Then came the partial disability clause paying for twenty-six weeks 40 per cent. of the total disability indemnity originated by a company which soon afterward passed out of existence. Theretofore, accident policies covered only total disability. The companies, fearful of its abuse, long hesitated to adopt this improvement, but it made its way.

To another company also comparatively short-lived belongs the credit of devising the "accumulation" plan of adding 5 per cent. to the principal sum for ten years without additional premium. This was very generally adopted, though in many cases reluctantly under compulsion. These three innovations, which are now apparently permanently fixed in the business, were followed in rapid succession by other additions to the cover until the inventive imagination of policy builders was exhausted.

Among the liberalizations, most of which are still in use, may be mentioned: Extension of the limit of weekly indemnity payments from twenty-six weeks to fifty-two weeks, one-hundred and four weeks, and two hundred weeks successively, culminating in the removal of the limitation altogether; extension of the period during which death covered by the policy might result from accident; surgeons' fee provision; payment of hospital charges; payment of nurses' fees; optional indemnities for fractures, dislocations, etc.; gratis travel insurance of beneficiary; insurance of minor children against death or dismemberment; extension of the doubling clause to include elevator, burning building, earthquake, explosion, lightning, and (for an additional charge) private conveyance accidents; extension of the original clause doubling only for travel accidents that resulted in the wrecking of a railway car or of a steam vessel to cover not only while in or on any public passenger conveyance but also steps or platform or even specially while boarding or alighting; registration or identification; quarantine indemnity; improvement of the partial disability clause to pay various proportions from 25 per cent. to 90 per cent. of the total disability amount and extension of the time limit to a maximum of two hundred weeks; lengthening of the list of accidental blindness and dismemberment payments and increase in the several amounts; specific payment for permanent disability due to blindness or paralysis from diseases; specific payment for total permanent disability; payment of physicians' or surgeons' charges for non-disabling injuries or illness; triple indemnities for specified classes of accidents; substitution of 10 per cent. for 5 per cent. in the accumu-

lation rate and, finally, the issuance of fully accumulated policies with the maximum rate at inception; application of the accumulation plan to weekly indemnity and other benefits; monthly income to beneficiary; payment of expense of transporting the remains of a policyholder from place of accident to residential; return of all premiums in event of accidental death.

When we come to discuss benefits some of these many "frills" will be described and discussed in detail. For the present let me state my individual opinion that nearly all the added benefits have intrinsic value and are justified, not merely as aids to the sale of the insurance, but as solid improvements in the actual protection of the policyholder in the time of his misfortune. The sneer that classes these as useless with the bright colors on the wrappers of a commodity is unwarranted.

WRITING OF HEALTH INSURANCE

Meanwhile, another and much greater extension of the protection was being perfected. In the partnership of the two allied lines, accident insurance is generally considered the senior. As a matter of history, health insurance originated earlier. Indeed, the very names of the first companies to write accident insurance in this country show that they were organized for the other line. They had actually been writing health insurance before their charters were amended to authorize the issuance of contracts insuring against accidents separately. But as far as stock companies' activities were concerned, health insurance died promptly. Modern health insurance is in no sense a revival of the old scheme but has grown up from a new germ idea and has matured slowly on lines entirely different from those followed in the first attempts. In fact, in its first form it was only another "frill" on the accident policy. We will briefly trace its course.

Again following an English precedent, in 1897, a New York company began to offer to its accident policyholders a rider extending the disability provision to include eight diseases, namely, typhus, typhoid, and scarlet fever, small-pox, varioloid, measles, and Asiatic cholera. These diseases were selected because they were clearly marked and, therefore, could be easily distinguished from other disease conditions and being contagious were by so much akin to accidental conditions. Today this seems a paltry beginning for a great branch of insurance. At the time, however, the addition of this new "frill" was by admirers acclaimed as an example of marvelous enterprise and by competitors sometimes sneered at, but more often deprecated as radical recklessness.

It must be remembered that every previous attempt of a stock company to write health insurance had ended in disaster. This

has never been lost sight of and the extension of the insurance to its present proportions has been by slow and cautious steps. The endorsement covering seven diseases for a charge of $0.50 for $5 a week was succeeded by a full-fledged policy form covering fifteen diseases and the premium was multiplied by four. These did not pay for disability of less than seven days nor in excess of twenty-six weeks, nor did they make any payment for disability that did not confine the assured to the house. The list was extended to thirty diseases, then to fifty, and so on until in 1900 the best health policy covered most diseases but limited to thirteen weeks and to five weeks, respectively, the liability for the more serious and the chronic diseases.

From the beginning it had been premised that only to policies limited to specified diseases could be applied the methods of writing accident forms. It was accepted as an axiom that when the insurance approached a complete cover a preliminary medical examination would become essential to a proper selection of risks. But courage was imparted as it transpired that for each enlargement of the list the added premium had proven sufficient, and in 1911 a policy was published which covered all illnesses except rheumatism and insanity, the plan of listing the diseases covered being discarded. Experience with this form soon justified the cancelling of the two exceptions and to the product thus finished the title disability insurance was given.

From time to time competitive rivalry had, wherever they could be found appropriate, applied to the health policies the collateral benefits of the accident policies. The seven days' exclusion was stricken out, confinement to the house as a condition of disability was waived, and even partial disability from sickness was covered. Keep in mind that we are making a general survey of the whole field. No one policy included all the "features." Each company was eloquent concerning the inventions of its own genius and either belittled the devices of its competitors or condemned them as unsafe and unsound. The result was a diversity of policy contracts that is bewildering to the inexpert.

It may be well to record in passing the result of one method of meeting this competition. Policies of all companies had reached a high degree of attractiveness, but as long as they were different, there was a continuous clamor from the field force of each company for whatever selling points happened to be missing from that company's forms. The agent who expected to add to his own company's good points all those of every competitor, was as unreasonable as the little boy who insisted upon eating his cake and having it, too. Nevertheless, the insistence of a valued agent is rarely disposed of by pointing out the unreasonableness of his request. To meet this demand some companies declared

themselves prepared to duplicate upon request the policy of any serious competitor. It is worthy of recording that while this device measureably accomplished its purpose of satisfying the producers, comparatively few of the duplicated policies were actually called for. Even to men in the accident and health business the supposed value of an unavailable thing decreases rapidly when it becomes procurable.

GREAT VARIETY OF POLICIES

So, therefore, at the beginning of the second decade of the twentieth century, we find scores of accident and health policies, no two alike. Not only did the benefits vary greatly, but the general conditions were as far from uniformity as could well be. A demand arose for standardization. The companies must be protected from the constant pressure to meet competitive innovations; the agents must be spared the trouble of continual adjustment to kaleidoscopic changes, and for the buyers of insurance must be provided some relief against the adroitness of a few companies and associations that took advantage of their liberty to place in the policy unjust, obscure, or burdensome requirements that often operated to void claims and thus defeat the ostensible purpose of the insurance. The outcome of this agitation was the enactment of the standard provisions laws effective in New York and Massachusetts on January 1, 1911. Without dictating benefits, the State requires literal uniformity in respect to twenty general provisions dealing with notice, proof, change of occupation, and other matters essential to all policies. These have been the pattern substantially of similar enactments in other states. The details of these laws will be dealt with later in the course. A brief mention is made now because they are a milestone in the course of the business.

For many years past the substantial profits usual before 1910 have been missing. Indeed, in the ten-year period ended with 1920 on a premium collection of over $400,000,000 there was an underwriting loss of $2,000,000. The available statistics include only the aggregates of companies still operating. Plainly the showing of defunct companies would be relatively worse, and if their figures were added the general concern of underwriters would be amply justified.

EFFORTS TO REFORM HAVE FAILED

In these circumstances a reaction from the practice of adding to the features was to be expected. In 1914 companies with no protest from any quarter excluded the serious war risks which were not contemplated in the fixing of the premium charges and for which cover could not reasonably be expected in an accident policy. Other old restrictions have found their way back to

many of the policies. If the collateral additional benefits have not been abandoned it is because no company has felt strong enough to take that action independently. Many attempts have been made to secure concerted action in this direction, but the opponents have always been numerous enough, or strong enough, to give the proponents pause. The declining margin of profit has made some offices feel that such a reformation of the policy is imperatively essential to avoid the operation of the business at a loss. But it has been felt that if those in favor of this retrenchment acted without unanimous consent, the dissenting companies would have an undue advantage in competition. Indeed, these efforts have failed because every proposal produced some irreconcilable objectors whose competition actual or potential was too serious to be disregarded by the rest. Strong companies, while eager to sacrifice the fads of others, would not hear of surrendering their own special fancies. Again the old companies always insisted that the proposed agreements apply to new business only, whereas the newer companies saw that they would be heavily handicapped unless the new rules were applied to new and old policies alike. So, except for a few items such as children's and quarantine insurance, which the State insurance commissioners forced out of all policies, competition has ruled to this day unrestrained by restrictive agreements between companies and tempered only by the rising loss ratio.

Unless rate increases result in a proper adjustment between premiums and losses, this problem remains to be solved, perhaps by more careful underwriting and stricter supervision of claim payments.

EFFECT OF DIVERSITY IN CONTRACTS

It is customary to bewail the condition of diversity as an evil in itself, aside from the unprofitableness of the business. Unquestionably one effect of this constant broadening of the scope of the protection was to popularize the insurance. Agents and brokers enthused by some talking point pressed the selling more vigorously. The attention of prospects deaf to the dull recital of general warnings, could be aroused by the clever exploitation of a new slogan. But again, in spite of manifest disadvantages, it is not certain that the contract form is the most demoralizing channel of competition. Were the policies uniform competition would be diverted to the premium or the commission rates and a real "war" on these fronts would mean many more casualties. Again the open rivalry has matured the broad and inclusive contracts that are current today. Contrast the compulsory uniform fire policy consisting chiefly of exceptions many of which have to be neutralized by "forms" before any one will accept the policy,

or the narrow and conditional policies issued in England, where there has been no corresponding stimulus.

In the experience of many companies health insurance has been the more unprofitable division. Some have substantially increased their premium charges and others are now in the throes of that unpleasant process. To ask more from new applicants only is a simple enough procedure, but it is obvious that such a plan will be ineffective as a radical cure for an excessive loss ratio. If at the same time renewals are issued at the previous too low rate, the plain tendency will be to make old policyholders more persistent. The necessity of a bad situation of this kind is a prompt readjustment of the whole business on an adequate premium basis. Therefore, consistent underwriters needing a greater premium income have applied the advance to old and new business alike. Again, to reduce the loss ratio companies promptly cancel policies as soon as the holder becomes a seriously impaired risk, when the claim frequently is more than usual, or when a predisposition to a chronic or recurrent disease is discovered. Since the premium is based on an annual selection of risks and includes no reserve loading for increased loss payments in later years, this course of action is both equitable and necessary.

Partly as a result of the remedial measures just discussed there was disclosed a serious disadvantage in health insurance as it had developed in conjunction with accident insurance. In truth it was no new discovery. The companies that first assayed the health field saw the ideal of a policy which, like life insurance, could not be cancelled or restricted. But their experiments had promptly ended in bankruptcy. It seemed, therefore, that an annual term policy subject to cancellation at any time at the company's option was the only safe arrangement.

NON-CANCELLABLE FORM

To meet the general demand for a policy that could not be cancelled and whose renewals were guaranteed against increase in rate, a few companies have in recent years been experimenting again with the so-called non-cancellable forms. There are written only on carefully selected risks after a physical examination more rigorous than that required for life insurance, the premiums are graded for age, and the policies are carefully drafted to avoid the obvious special dangers of this form. One feature of most such policies is the deferring of the payment of benefits until after a certain initial period at the beginning of each disability. This is an application of a principle that appears in other lines of insurance under the names of co-insurance or deductable average. Other details of this form will be described in a later

lecture. On every hand this non-cancellable policy is recognized as a hazardous experiment, though the tabulated experience of many years on the older forms is a guide to present-day underwriters that their predecessors did not possess. During the past year nearly every company in this branch has thoroughly revised its forms and adjusted the rates upward. Already two strong companies have withdrawn entirely after a short try-out in this field. Seven companies are now offering policies of this type.

Even a brief review of the history of our line would be incomplete without some allusion to the organizations that have made for co-operation between the companies. The International Association of Accident Underwriters was formed in 1889 by the mutual associations. Stock companies were welcomed as members, and in 1911 when it had become broadly representative of the whole business it was merged with the Board of Casualty and Surety Underwriters, under the name of the International Association of Casualty and Surety Underwriters. These and other similar bodies have brought men in the business together and have done much to create the mutual consideration and respect upon which the intercourse of the companies is now based. The printed proceedings of the annual conventions of these associations are annals of the thought and progress of the business. Although the efforts toward uniformity of forms and rates have borne little fruit, much good has been accomplished by the interchange of experience and counsel. In recent years the International Association has not concerned itself with the technical side of the personal accident branch, partly because in pursuance of a resolution of the 1914 convention, it brought about the organization of the Bureau of Personal Accident and Health Underwriters. The Bureau membership is now forty-six, and it is busy continuously, compiling statistics and collating the experience of companies on various phases of the business.

ACCIDENT AND HEALTH INSURANCE

Benefits Under Disability Contracts—Different Coverage Afforded—Elective Benefits—Accumulation Clauses—Various Collateral Provisions

By Charles Bellinger, of W. L. Perrin & Son, General Agents in New York City for the Continental Casualty

In discussing the benefits of accident and health insurance, we will deal with the typical "disability policies" covering accidents and illness, generally. The forms of the companies vary greatly; indeed, most companies issue several types of policies often radically different from each other.

Limited health forms may be dismissed with brief mention for few are now in use. Conservation required that the business be developed a step at a time from the policy restricting the health cover to a few diseases listed by name to the general "all sickness" forms, the listing method being discarded. The limited, or specific, health policy was unsatisfactory to both parties to the contract. They were tolerated when no other was procurable, but in recent years have been abandoned by common consent. The assured did not always accept cheerfully the explanation that no benefit was payable for, say, influenza, and was not grateful for the reminder that he had, often because it cost less, chosen a policy that did not come nearer than pneumonia to the cause of his recent illness. The dishonest claimant, with a co-operating physician, looked at the list of diseases before the diagnosis was made. The claim was then presented (and, often, paid) not for influenza but for pneumonia. The plan consequently too frequently gendered ill-will and discord.

LIMITED ACCIDENT POLICIES

Limited accident policies have had almost no vogue in the United States, though the most restricted forms have been widely used in England. A favored plan has been a newspaper coupon granting insurance for twenty-four hours in a small amount for accidental death, blindness, or dismemberment, and covering readers only while carrying the current day's issue upon their persons. The trifling cost is included in the price of the newspaper, the premium being computed at an agreed rate for each 1,000 circulation. The general use of this and other similar schemes has resulted in discrediting

and, very largely, in displacing standard accident insurance so that its development has been distinctly retarded. The average premium in America is many times the England average.

"COMMERCIAL" POLICY BENEFITS

Dealing, then, with the typical commercial accident and health policy covering substantially all accidents and all sicknesses we will follow the order in which the benefits are usually stated in the policy contracts.

The most conspicuous benefit is the payment for loss of life. This belongs exclusively to the accident side of the disability policy. The holder of an accident only policy is likely to understand that death from accident only is covered, but occasionally an assured supposes that a disability policy covers death from disease. To cover death from natural causes would not only trespass illegally upon the field of life insurance, but would, besides, necessitate a higher premium and more exacting entrance requirements than are exacted in this business. In the beginning the payment for death was uniformly two hundred times the weekly indemnity, the unit being $1,000 death for each $5 weekly indemnity.

This proportion was first disturbed by the accumulation clause which provided for a gradual increase of the principal sum benefits only to a ratio, in the sixth and subsequent years, of $1,500 death to $5 weekly indemnity. Today the general practice is to anticipate the accumulation and pay in the first year what was the ultimate amount. Some companies, while adopting these proportions as standard, write "unlevel insurance," permitting the policyholder to specify what proportion he desires. The premium adjustment is usually on the basis of $2 for each $1,500 death benefit and $3 for each $5 weekly indemnity.

To fall within the contract, death must result directly and solely from accidental means. A safeguard against abuse appears in the usual requirement that the death must occur within ninety days (sometimes one hundred and eighty days) from the accident. Death ensuing later is covered if it is unmistakably linked with the accident by total disability continuing from the time of accident to the time of death. When this condition is fulfilled liability is acknowledged if death results within two hundred weeks, or within five years, or in the case of some policies at any time during continuous total disability.

OTHER LARGE PAYMENTS

Linked to the death benefit, and similarly guarded, are large payments, based on the principal sum, for accidental loss of

sight or limbs, for the loss of two eyes, hands, or feet either in pairs or "assorted," the full principal sum is payable; for the loss of one eye, hand or foot, one-half this sum. Some policies pay also three-quarters, or two-thirds, for the loss of an arm or leg, and one-fifth for the amputation of the thumb and index finger; others make part payment for loss of speech or hearing, and full payment for the loss of both. The usual corresponding clause in the health policy provides a fixed amount for permanent disability from blindness or paralysis caused by disease. To qualify the assured must survive in this condition at least a year. The theory of those provisions is that the specified conditions are comparable with death in that some completely destroy, and the others seriously and permanently impair, the earning power of the injured. In some policies these payments are made optional, the assured having the privilege of disregarding them by electing to receive instead the weekly benefits for disability.

CLAIMS UNDER WEEKLY INDEMNITY PROVISIONS

Most accident and sickness claims are paid under the weekly indemnity provision. Here the measure of the company's liability is the disability of the assured from performing the duties of his occupation. The accident policy does not cover accidents as such nor does the health policy cover illness as such. Pain, inconvenience, and the like, though they are unpleasant results of an accident, do not entitle an assured to indemnity; he must show that the physical misfortune has resulted in disability from his business duties. The payment is not conditional upon actual loss of income. It is enough that he cannot perform his work. Even though his income is undiminished, the weekly indemnity is paid, nevertheless. But the amount of the weekly indemnity granted under the policies carried by him must not exceed the average weekly income of the assured. Obviously, if the weekly payment were greater than the money value of the time lost, a serious tendency to prolong claims would develop.

Indemnity for disability is paid at the specified rate every month or every two months and, though some policies have a two hundred weeks' limit, the payments usually continue, if the claim is made under the accident clause, as long as the assured lives and suffers disability. But the application to sickness claims of this life indemnity clause, making the benefits payable for an unlimited period terminated only by the assured's recovery or death, has caused much misgiving. Most companies do not pay sickness indemnity beyond fifty-two weeks in any case; some pay for one hundred and four weeks; a few boldly pay for the whole term of disability. There is,

too, a marked divergence between the accident and the sickness covers in the definitions of total disability.

In the accident part of the contract it is considered sufficient to require inability to perform any and every duty pertaining to "his occupation," inferentially the occupation at the time of accident. But this is open to abuse, especially where an illness causes the disability.

A man disabled from one occupation might be able to take up another. The new occupation might be equally lucrative, or even more lucrative than the old, and, the incentive for resuming the old occupation having disappeared, a claim be made based upon an allegation of permanent disability from the old occupation.

In some policies this danger is forestalled by requiring disability from "any work or occupation for wages or profit" or from "any gainful occupation" if the policy provides a life indemnity for disability from illness. There are, however, policies that retain the more benign accident definition.

PARTIAL ACCIDENT DISABILITY

Partial accident disability is recognized for a limited time and is compensated at a reduced rate. The companies for a long while were loath to adopt this feature, but it was found to be a measure of economy. Many claims could be disposed of at a lower rate of indemnity that, in the absence of such a clause, would have been presented for the full total disability payment. Now every accident policy carries this clause, the proportion of payment being, variously, twenty-five, forty, fifty, or seventy-five per cent., and the limit twenty-six, fifty-two, or two hundred weeks.

Indemnity for partial illness disability is not so uniformly provided. The occurrence of well-defined partial disability from disease is much less frequent than partial disability from accident. Many companies omit the clause altogether and those that employ it usually limit the term to fifty-two weeks.

ELECTIVE BENEFITS

Under the heading of "option indemnities" or "elective benefits" fixed amounts are provided for specified injuries other than loss of life, limbs, or sight. For fractures, dislocations, amputations of fingers or toes, and similar minor injuries, specific benefits are listed. These are paid if the assured so elects. This offers an automatic adjustment of many claims and the option is exercised when the given injury causes little actual disability or where the assured wishes an immediate payment without the necessity of proving the fact and the duration of disability.

DOUBLE BENEFIT ATTRACTIVE

The double benefit clause is a striking and attractive feature. Men generally are impressed with the hazards of traveling. It was the dread of travel accidents that suggested the first accident policies. Today these risks have been greatly reduced. Accident insurance men know that the middle of a railroad train is about as safe a place as one can be in. A farmer pays four times the premium charged a traveling salesman for the same amount of protection. So the companies can well afford to pay double amounts for such accidents, inasmuch as the promise to do so greatly adds to the salability of the policy. The clause has been extended so that double payments are made for other dreaded calamities—for accidents in passenger elevators, burning buildings, lightning, explosion, etc.

For an additional premium some companies pay double for all accidents in private conveyances, including automobiles, pleasure boats, etc. There are many variations of this idea, for example, one company features a policy paying triple indemnities for death or disability caused by the assured being struck by a vehicle on a road. A few companies at one time sought physicians' business by promising double payment for septic poisoning accidents, but the heavy loss cost soon caused the withdrawal of this plan.

ACCUMULATION CLAUSE

Another selling feature is the "accumulation clause." Originally each $5 weekly was linked with $1,000 death benefit. Then companies, to make renewals more secure, offered annual additions of five per cent. or ten per cent. applying to the principal sum benefits only, until they had increased fifty per cent. In course of time a company new to the given risk would in competition "match" these increases and thus it came about that the standard proportion of weekly indemnity to principal sum became one to one hundred and fifty from the beginning of the policy. The accumulation clause applied to the principal sums disappeared. At present some companies, for an additional premium, will make the weekly indemnites accumulative, the increases being ten per cent. for five years, twelve and one-half per cent. for four years, or twenty per cent. for two years. The arrangement in an annual term policy subject to cancellation is a bit illogical; if the assured are persistent in renewing the policies the ultimate loss cost will be much increased.

SURGEON'S FEES PROVISION

The surgeon's fee provision is in general use. The policy contains a reasonably complete table of surgical operations

to each of which a benefit is affixed. The stated amounts are paid as allowances on account of surgeons' fees. The amounts are guaranteed regardless of the actual cost of the operation in the given case. For a major operation four times the weekly indemnity is paid, for simple suturing, one-fifth. Only one payment is due for surgical services as the result of any one cause of disability and no payment is made for operations necessitated by long-standing conditions.

OTHER COLLATERAL BENEFITS

Another collateral benefit is the hospital charges indemnity, sometimes as an absolute payment and sometimes as a reimbursement for actual outlays. An amount equal to the entire weekly indemnity, or to fifty per cent. thereof, is paid for ten, twelve or twenty-six weeks. On a similar basis nurses' fees are provided for, in a few policies. The benefits are sometimes paid in addition to the surgeons' fees and sometmes the assured is limited to an election of one type of addition to the weekly indemnity. When no other compensaton is payable, an arrangement is made to pay the "first aid" medical or surgical fees up to one week's indemnity.

NON-CANCELLABLE BENEFIT.

Brief reference must be made to the benefits of the so-called non-cancellable policies. Though many companies feel that the rocks and reefs of the regular health insurance coasts have been incompletely charted, and that navigation is perilous, a few companies have launched out into this ocean. The characteristic feature of the prevailing type of non-cancellable insurance is that until a stated age, usually sixty years, the rate may not be increased, the cover may not be changed, and the renewals are guaranteed upon the payment of the yearly premiums. The policies are of two general classes. One is based upon the familiar "commercial" form and contains many of the collateral benefits such as the doubling clause, surgeons' fees, etc. The other is the so-called, "income" policy which is much less ornate, omits most of these collateral provisions and emphasizes the payment of indemnity for disability. A necessity of this type of policy is that there should be a "waiting period" at the beginning of each sickness disability. Usually no payment is made for the first two weeks (at a reduced rate the eliminated period is lengthened to one month, two months, or three months) of any period of disability.

Most non-cancellable policies make provision for the loss of sight and members on a bâsis different from that employed in the commercial policies. The regular weekly or monthly

indemnity is paid as long as the blindness or dismemberment causes total disability. The loss is further deemed to cause a permanent impairment and indemnity is paid therefor; in the event of the loss of two hands, feet, or eyes, the total amount is paid, but for the loss of one hand, foot or eye, payment is made at a less rate.

IN CLASS BY THEMSELVES

Measured by the multiplicity of benefits, the policies of accident and health insurance stand in a class by themselves. In fire insurance each new application of the indemnity principle is represented in a separate form with an additional premium; in the disability line one policy and one premum includes all such improvements. Had fire insurance followed this precedent, to the cover of direct damage by fire would have been added use and occupancy, rents, leasehold, consequential damage, sprinkler leakage, etc.—all in one policy.

Viewing the comprehensive and, from the buyer's standpoint, the attractive form, shall we commend the accident underwriters for this thorough and bountiful provision for the financial losses due to accident and illness, or shall we condemn them because, in the competitive race for volume of premium, some have not counted, with sufficient care, the cost of these selling points and, as a result, the margin of profit in the business has grown less and less as the policies have become more and more ornate?

DISABILITY CLASSES AND RATINGS

Classification of Risks—Factors Contributing to Accidents—Grading of Occupations—Seeming Classification Inconsistencies—Disability Duration

By Charles Bellinger, of W. L. Perrin & Son, New York City General Agents, Continental Casualty.

The first broad "classification" to which applicants for accident and health insurance are subjected is the division into the acceptable and the rejected. Some tests are common to both branches, but in many respects the underwriter must see two proposals in each application for combined insurance. Frequently a history of previous illnesses, some physical impairment, or a susceptibility to a recurrent disease will prevent an applicant from securing health insurance without debarring him from the protection against accidents. Academically, the converse of this statement could be made, but in actual practice, while accident insurance is freely written separately, very few companies will entertain an application for health insurance alone.

An application is in effect a questionnaire requiring declarations under a dozen or more heads and the answer to each query calls for a "classification" of some sort. We will in this lecture limit our task to a consideration of those classifications that result in rate differentials. We will treat first of accident insurance; here classifications are much more varied than in health insurance.

FUNCTION OF ACCIDENT INSURANCE

The function of accident insurance, like that of other branches of underwriting, is to distribute as equitably as possible over a large group the loss or damage due to a class of misfortunes to which all are liable but which in fact will be suffered by some members of the group only. It is impossible to tell in advance which individuals will suffer the losses, so all contribute on an agreed basis to a fund, from which the indemnities are paid as the misfortunes develop. The misfortunes in this case are death and disability due to bodily injuries sustained through accidental means. That many of these losses will occur is known; no degree of carefulness exercised by the individual or by society can cancel the axiom, "Accidents do happen." That they should be subject to any

ascertainable uniformity or "law of average" seems to the layman most improbable. Nevertheless, the average number of these occurrences, the proportion of fatal and non-fatal injuries, and the average durations of the disabilities resulting from the latter are known with tolerable certainty. Many hundreds of thousands of accidents have been recorded and their results tabulated. Careful study of these tables has made it possible to classify the causes of accidents and has enabled the underwriter to forecast with reasonable accuracy what the average results will be and what parts will be played by the various classes of causes in producing these results.

FACTORS CONTRIBUTING TO ACCIDENTS

But these averages must be applied to individuals and the liability to accidents of insured persons varies greatly. There are many contributing factors. A careful analysis to be theoretically exhaustive would test and grade risks according to occupation, avocation, past history, residence, degrees of physical fitness, etc. But some of these elements are difficult to standardize and it would be impracticable to apply many of the tests. If everyone is to bear his fair share of the burden, the premium charges must be levied upon each group of risks as nearly as may be in proportion to its contribution to the sum total of the loss.

It is found that, as far as accident insurance is concerned, the occupation of insurers furnishes the most tangible, convenient and equitable basis of grading. When a sufficient number of claim records is considered from the viewpoint of the causative influence of the daily vocations of the injured, two chief conclusions are at once apparent. First, that accidents may be divided as to whether or not they arise from the occupational hazard. Second, that the respective influences of the various occupations upon the losses is ascertainable and is reasonably uniform within each occupation group.

When the experience tables are properly developed this double test is applied throughout. The whole body of exposures is divided into fixed occupation groups. The whole body of losses is first divided into those chargeable to the "trade hazard," and the rest are charged to the "general hazard." Under the latter head will fall the accidents resulting from risks to which all policyholders are subject, whatever their occupations may be. These are such risks as those of home, street, recreation, travel, etc. Occupation has little or no effect upon either the frequency of the occurrence or the severity of the effects of the general hazard accidents. During their time of freedom from work all men are on a

substantial parity in this respect. By averaging the aggregate of these losses against the whole number insured regardless of occupation, a factor is developed that is applied uniformly over the whole spead of exposures.

GRADING OF OCCUPATIONS

It has been found serviceable to grade occupations into nine or ten groups called classifications, all occupations in each group being of substantially equal accident loss cost. Premium charges are graded accordingly. These premium charges have been built up of a base representing the general hazard to which, in each case, is added a factor representing the trade hazard of the given group. Thus the general hazard cost is spread evenly over all and the burden of the specific hazard of each occupation is carried by the insurers in that occupation.

The accident rate book is an exhaustive list of employments; opposite each entry is placed a symbol or name of a classification and a figure indicating the maximum amount that will be written on individual risks in the given class. The classifications are variously designated by the different companies. Three codes are in general use, as follows:

Name	Numbers	Letters
Select or Special	1	A
Preferred	2	B
Extra Preferred	2+	C
Ordinary	3	XC
Medium	4	D
Special	5	XD
Hazardous	6	E
Extra Hazardous	7	F
Prohibited	X	FF

VARIOUS CLASSIFICATIONS

In the first classification called "Select" or "Special" are placed occupations with little or no trade hazard and the premium charge here is predicted upon the cost of carrying the general hazard only. Typical occupations in this group are bookkeeper and bank president. Occasionally an accident will happen that is traceable to the business duties of such employments, but compared either with the total of exposures or with the aggregate of the losses these are so rare as to be negligible.

In "Preferred" are placed risks with an element of trade hazard so slight that by most companies the distinction is ignored and for these risks the "Select" rates are accepted.

In the next classification, namely, "Extra Preferred," are placed professions and businesses that result in a considerable increase in the loss cost of accidents, but where the general hazard still predominates. Here the usual increase in premium is about twenty or thirty per cent. "Ordinary" risks require a differential of about 50 per cent. over the base rate; "Medium" risks one hundred per cent.; "Special" risks one hundred and fifty per cent.; "Hazardous" risks two hundred per cent. and so on.

We have referred to occupation as the chief basis of rating but it must not be supposed that the classification of risks even by this test is as simple a process as it seems. Often a considerable range of hazards is found within one occupation. For example, "Contractor" can be thought of as an occupation, but, from an accident viewpoint, there are many kinds of contractors. The principal of a large contracting organization who does little besides the office work of negotiating and determining general plans is a far different risk than the contractor with small interests who engages in manual labor alongside his few men, all working together at a trade.

The classification is affected also by the class of contracts undertaken. Obviously, the work of inside decorating in finished buildings involves fewer dangers than that of sub-aqueous tunneling or that of rock blasting. In this one occupation could be found risks that would fall into every classification from "select" to "prohibited." A series of quotations may be instructive:

Select: Contractor, office duties only.

Preferred: Contracting painter, general supervision of the inside work only.

Extra Preferred: Building contractor, office and general supervision only, not actively superintending construction.

Ordinary: Building contractor, superintending only.

Medium: Contractor, bridge building, superintending only.

Special: Contractor, tunnel work, superintending only.

Hazardous: Contractor, sub-aqueous concrete work, superintending only.

Similarly, many other occupations include various gradations of hazards and consequently of ratings. Therefore, the application form requires the applicant to name the three factors in the description of his occupation, namely, his business, his occupation and his duties. These factors combined enable the underwriter to appraise the trade hazard.

SOME EXCEPTIONS

Subject, like all rules, to exceptions, it may be broadly stated that men whose duties may be stated as "office and traveling" are "select" risks and this formula is widely employed to justify this classification. Again, broadly speaking, it may be laid down that, as a rule, manufacturers of non-metallic products are "preferred" or "extra-preferred" risks and that manufacturers of metallic products belong to the "ordinary" class. We speak only of those whose duties are superintending only and who, themselves, do not engage in manual labor.

In itself, supervision of manual labor almost always involves some ratings up for, even though the applicant may not handle tools or work himself, a distinct increase in risk results from his presence where the processes are going on—what is called the "hazard of employment." Actual experience, carefully tabulated, is the only safe guide in classifying. Presumptive probabilities, unsupported by statistical data, are unreliable.

COMMERCIAL TRAVELER GOOD RISK

Some occupations which, to the inexperienced seem to involve great risks, are found desirable. A typical instance is that of the commercial traveler. So far from being a hazardous risk because he spends so much of his time on railroad trains and other conveyances, he everywhere receives the lowest classification and risks in this occupation are much sought after. On the other hand, few laymen would place a barber in "extra preferred" or a steel plate engraver in "ordinary."

On first impressions such work would not suggest any great danger and no reason appears for charging a barber more than a clerk in a dry goods store or an engraver as much as a machinist. But the loss cost of the occupations warrant the ratings, not because of an equal danger of injury but because of the longer disability that follows the injury. A barber must quit work for a slight finger hurt that would not disable a dry goods clerk at all, and the delicacy of the work of the engraver demands a degree of dexterity not required of the machinist, so that the one keeps at work in spite of an injury that would totally disable the other.

Another classification that is usually unexpected is the placing of physicians, surgeons and dentists in the "extra preferred" class. These professions seem non-hazardous, but again experience teaches contrary to apparent probabilities. The risk of septic poisoning and the exacting nature of their work, with its irregular hours and nerve strain, conspire to take "the doctor" out of the class of the best accident risks.

SEEMING INCONSISTENCIES

The plan of fixing the classification only on the du. the occupation leads to some inconsistencies that would s. intolerable to the inexpert. If the business duties of a mer chant entitle him to "select" classification he is written accordingly, even though it be known that he spends much of his time automobiling. But the driving of a car as a business results in a marked advance in premium. The merchant's chauffeur accompanying him, and seemingly subject to precisely the same dangers, pays a rate fifty per cent. or one hundred per cent. higher.

Another "select" risk may be an amateur gardner, but does not, on that account, lose his favorable classification. The years have shown that such differences may be disregarded and that, on the average, to use the occupation as the sole basis of rating is fair and dependable. The law of average levels the apparent inequalities and gives results of surprising uniformity.

CHANGE OF OCCUPATION

Change of occupation does not forfeit the insurance. If the change is to be an occupation classed as more hazardous than that in which the insurance was written, a pro-rating of the claim is provided for. That is, the payment is made on the basis of the amount that the premium paid would have purchased in the higher classification. Herein lies the explanation of the great care taken to list in the rate book all occupations considered undesirable, to place them in a formal class called "prohibited" and to provide a higher premium charge and a very small benefit for risks so classified.

If they are "prohibited," why name any rate or limits? Under the policy a pro-ration for change of occupation can be enforced only if the injury is sustained in an occupation "classified by the company as more hazardous than that stated in the policy." This remedy might fail if rates for the new occupation were not given in the rate book; however hazardous the new exposure might be, there would be danger of a court decision that the pro-rating clause could not be applied.

In view of the supposed safeguard of this pro-rating clause it is sometimes suggested that a company could safely underclassify a given risk by accepting an application describing the duties as less hazardous than, in fact, they are. It urged that if any injury should result from the unstated hazard the provision just described would reduce the claim and thus equalize the transaction and protect the company. But this

reasoning is unsound. It is in substance a suggestion that in the cases where there is no loss the company receive no added premium for the undisclosed hazard and should, nevertheless, pay an indemnity (though reduced in amount) where the hazard has caused a claim.

Where an applicant has more than one occupation or more than one grade of hazard in the same occupation, the higher hazard always governs as to rate. Any other practice would be a violation of the principle just laid down.

OCCUPATION AND HEALTH RISKS

We have confined our discussion of occupation rating to the accident part of the contract for it has little or no bearing upon the classification of health risks as such. Whatever inequalities there are either mutually offset each other or are negligible in their aggregate effect.

The two lines differ also in respect to the other chief standdard of classification, namely, the age element. On this criterion health risks vary more than accident. The extreme limit at which health risks are assumed is sixty years (in some cases fifty-five years), but accident risks are taken up to age sixty-five (or age sixty).

It is the practise to divide acceptable health risks into age groups. Usually one level of premium governs from age eighteen to age fifty and a higher level from age fifty-one to age sixty. If the average disability experience at the successive ages were plotted as a graph no sudden up-turn would be found at age fifty.

AGE AND DISABILITY DURATION

Beginning in the later twenties the aggregate duration of disabilities for each unit of exposures would climb steadily, the rate distinctly increasing in the later thirties and accelerating rapidly after passing age forty-five. Right through to age sixty the risks of each year would show progressively poorer results. The question spontaneously arises as to whether there is a sufficient classification of health risks on the score of age. Undoubtedly strict equity would require a gradually ascending scale of charges stepped up each year as in life insurances. In planning commercial accident and health insurance this method was discarded as too cumbersome and confusing. It is notable that after a brief trial the plan of level charges was abandoned in non-cancellable disability insurance and that all companies now writing that form employ only on the plan of a differential for each age at time of entry.

For accident insurance no extra premium is charged on account of age, all risks within the age limits being on the same premium basis.

It is not generally known that a graph displaying the influence of age on accident loss experience would show a similar curve to that developed in health insurance though this is unquestionably the fact. Where this is known it is not considered feasible to adjust premiums accordingly. The whole question of the influence of the age element on the loss ratios in both branches is worthy of careful study. A revision of the convenient rule of thumb now in vogue may be found in order. Certainly each class of risk should carry its own burden and if well defined age groups have unequal loss probabilities these should be reflected in the rates as are the occupation inequalities.

TYPES OF POLICIES DIVISION

Risks are divided also according to the types of policies which it is permissible to issue. A policy providing an indemnity for disability may be written only when the applicant is engaged in gainful occupation. The weekly or monthly payment is to indemnify for the loss of the money value of the time destroyed by the disability. Students, men retired from business, unemployed women and others who are not engaged in some regular occupation, on which they are dependent for support, are not insurable for disability indemnity.

To such applicants a poilcy providing fixed amounts for loss of life, eyes and limbs is available. Business women are eligible for accident insurance and in some occupations for certain forms of health insurance. Usually the premium for female risks is placed one class higher than for men in the same occupation.

A number of other factors would require exposition if we were to follow our topic into its widest application. Later in the course the principles of underwriting will be dealt with and many groupings and distinctions will come more appropriately under that heading.

INSURANCE AGAINST BURGLARY AND THEFT

Burglary Policy Definitions—Coverage of Contract—What Moral and Physical Hazards Include—Latest Underwriting Methods—Whose Property Is Covered?

By W. P. Learned, Vice-President, Fidelity & Casualty Co.

The subject assigned for today is "Legal Definitions of the Terms 'Burglary,' 'Larceny,' and 'Theft.'" I shall add thereto "Robbery." It would seem that it should be rather unnecessary to define these terms, as we all understand, at least in a general way, what is intended by "burglary" and by "larceny" or "theft," and by "robbery." Unfortunately, the terms do not actually have the same legal meaning in all the States in which the companies transact business, and consequently in some State or States a far different liability might be required to be assumed from that intended. To avoid just this, and that the meaning of the terms as employed in burglary, and in burglary, theft and larceny policies might be uniform in the different States, it has been necessary to define the terms as used in the policies and also to qualify them.

It has become a general rule of law that if a policy of insurance is of doubtful tenor the court should employ that interpretation which is the most exacting against the insurer, who has prepared the contract. If, however, the contract is not of uncertain meaning the court should not, under the guise of construction, attempt to make a new contract; and also, that if the parties to a contract adopt a provision which contravenes no principle of public policy and contains no element of ambiguity, the courts have no right to relieve one of the parties from disadvantageous terms by a proposition of interpretation.

Therefore, it is quite within the rights of the companies that terms used in their policies should be specifically defined to give thereto the meanings intended by the companies rather than such as conform with the common law or State statutes, and the courts, in their interpretations of the contracts, are bound to respect the companies' definitions as long as they are not ambiguous and do not contravene any principle of public policy.

DEFINITION OF POLICY TERMS

In defining the terms included in today's subject I deem it very necessary, in order that a correct understanding may be had of the limitations, to define not only the terms in question but a

number of other terms which are used in the policies and limit the interpretation to be placed on the broad terms of "burglary," "larency" "theft," and "robbery," especially of the terms "burglary" and "robbery" as used in the policies.

"Burglary," as used in the residence burglary policy—commonly referred to as the "burglary only" policy in distinction from the broader policy, the "burglary, larceny, and theft policy" —is defined and limited not according to common law or the statute of any State, but to burglary of property from within the premises, committed by any person or persons who, with force and violence, of which there are visible marks upon the premises, have made entry into the premises, or, after effecting the loss, have made exit therefrom.

Policy liability, however, is subject to certain other conditions and limitations clearly set forth in the policy, and also to the full performance of the warranties in the policy schedule.

COVERAGE OF THE CONTRACT

The burglary, larceny, and theft policy, commonly called the theft policy, as its title indicates, covers loss effected through the commission of burglary or larceny or theft, though the two latter terms are practically, if not actually, synonymous, and the only occasion for the inclusion of both terms and also of "burglary" in the residence theft policy is that there may be no uncertainty in the minds of policyholders as to loss by theft of any kind being included. As the policy covers loss by larceny there is no occasion in this policy to define or to place a restricted meaning on the term "burglary," because while a larceny or theft would not necessarily mean the commission of a burglary, on the other hand, there cannot be a burglary without the commission of a larceny or theft.

Both the burglary only and theft policies—cover loss effected by any person, domestic servants included—except by a person whose property is covered under the policies.

Robbery, in contradistinction to "larceny" or "theft," is the felonious taking of personal property in the possession of another, from his person or immediate presence, against his will, accomplished by means of force or fear. "Robbery" is where a person, either with violence or with threats of injury, and putting the person robbed in fear, takes and carries away a thing *which is on the body* or in the immediate presence of the person from whom it is taken, under such circumstances that in the absence of violence or threats the act committed would be a theft.

Larceny, in criminal law, is the wrongful and fraudulent taking away by one person of the mere personal goods of another from any place, with a felonious intent to convert them to his (the taker's) use and make them his property without the consent of

the owner; the felonious taking and carrying away of the personal goods of another; the unlawful taking and carrying away of things personal with intent to deprive the right owner of the same.

Theft is an unlawful, felonious taking away of another man's movable and personal goods against the will of the owner.

Felonious, in criminal law, is an act manifested or done with the intent to commit a felony—a criminal act of an aggravated kind which is punishable by imprisonment in a penitentiary or, in extreme cases, by death.

Violent, by which the definitions of "burglary" and "robbery" also are qualified, is an act proceeding from and marked by great and intense physical force characterized by intensity of any kind.

Violence—in law—physical force; force unlawfully exercised; an act tending to intimidate or overawe by causing apprehension of bodily injury.

Overt—qualifying one of the definitions of "robbery"—open, manifest. In criminal law, an open, manifest act from which criminality may be implied. An overt act essential to establish an attempt to commit a crime is an act done to carry out the intention, and it must be such as would naturally effect that result unless prevented by some extraneous cause.

"Premises," in the residence policies, is specifically limited to the assured's dwelling—to the entire building if the dwelling comprises the entire building. If, however, the dwelling is only a flat or an apartment, or a room or a suite of rooms, then "premises" is limited to that part of the building actually and exclusively occupied by the assured as his dwelling on the floor designated in the schedule; and

MERCANTILE SAFE AND OPEN STOCK POLICIES

In the mercantile open stock and mercantile safe burglary policies, it is limited (a) if the assured occupies the entire building designated in the schedule to the interior of said premises, meaning the entire interior of the building—cellar, halls, and stairways; and (b) if the assured occupies only a part of the said building, to that portion actually occupied by the assured on the floor or floors designated in the schedule, thereby excluding all other parts of the building, such as the public halls, stairways, etc.

DEFINING POLICY TERMS

It is possibly more necessary and important to define this term as used in burglary policies than almost any other term, because, as used in the policies, it has a much more restricted meaning than that embraced in the term as generally used. "Premises," for example, when applied to a country place, is ordinarily understood to include all within the grounds, as the dwelling, the

stable, all outbuildings, and even the grounds as well. In the case of an apartment or flat, the term "premises" ordinarily might, and doubtless would if not specifically defined, include all parts of the building occupied by the tenant under his lease—not alone his living quarters, but also storerooms and closets located elsewhere in the building apart from the actual living rooms—even possibly a public hallway, especially on the same floor as the apartment or flat. That the term "premises" shall not, under any circumstances, be given any such broad interpretation, "premises" is specifically defined as above.

In burglary insurance, as in fire insurance, the two conditions of prime importance are the physical and moral hazards.

PHYSICAL HAZARD OUTLINED

Physical hazard pertains to the character of the neighborhood and of the building or premises insured, and to the physical protection, or lack thereof, afforded. A poor risk from a fire insurance standpoint might not be a bad risk from a burglary insurance standpoint; and vice-versa, a risk that might not be considered physically a poor risk from a fire insurance standpoint, owing to the character of the neighborhood, the character of the property insured, and the protection afforded against fire, might very well be deemed to be a poor burglary risk, due to the valuable character of the contents and to the lack of portection against ready access by burglars or thieves. Fire insurance and burglary insurance, in this particular, do not go hand in hand. For example, fire insurance demands where window shutters are used that they may be readily opened from the outside. Window shutters, iron gates, etc., to afford any protection against burglary must be impossible or difficult to open from the outside.

WHAT MORAL HAZARD INCLUDES

Moral hazard is that which pertains to the honesty and trustworthiness and to the "moral" character of an assured or an applicant for insurance.

Important as the moral hazard is in fire insurance it is far more important in all forms of burglary and larceny and robbery insurance, as while in fire insurance, precedent to any claim, a fire must actually have occurred, furnishing direct evidence of the occurrence of the fire, and almost invariably there are damaged goods remaining from which an estimate of loss may be made. In the several forms of burglary insurance, however, the actual commission of a burglary or theft or robbery may have occurred only in the mind of the claimant, and the extent of the loss and the value of the property claimed to have been stolen rest very largely on the honesty and trustworthiness, as well as on the recollection or imagination, of the claimant.

UNDER-INSURANCE SERIOUS MATTER

Another condition that has always been of serious import in the conduct of residence burglary and theft insurance, as also of the mercantile open stock line, has been insufficiency in the amount of the insurance compared with the total value of the property exposed to loss. The insurance, in the past, has not been specific insurance on specified articles, or even on specified classes of articles, but "blanket" insurance on the entire personal belongings of the assured and the assured's family; and, in the case of mercantile open stock insurance, of the entire stock of merchandise, irrespective of its kind and of its total value.

The minimum amount of insurance issued was $1,000. Such minimum amount was obtainable whether the applicant had personal property of the total value of $1,000 or of $10,000, $25,000, $50,000, or even $100,000 or over, and the premium charge was the same for each. Unfair and unjust to the assured, for whom $1,000 insurance might be practically 100 per cent, or full insurance, that he should be required to pay the identical premium required of the assured for whom the same amount of insurance, viz., $1,000 might be only 50 per cent, 25 per cent, 10 per cent, or even 1 per cent insurance. Equally unfair and unjust to the companies, for the identical premium, to assume the same total liability on such disparities in the values at risk.

In the past applicants for the insurance have been satisfied to carry the minimum amount of insurance deemed sufficient to cover the maximum loss on any one occasion. The selling agents, satisfied to please their clients, have made little or no effort to induce larger insurance more in proportion to the total values, and competition between companies has prevented insistence upon the carrying of insurance in amount commensurate with the value at risk.

The inevitable result—serious money loss to the companies—was long foreseen, but correction on any reasonably sound basis was not possible until the thirty-odd companies, actuated by their common bad experience, could evolve revised methods reasonably satisfactory to all that would give promise of improved experience from a loss-rate standpoint.

NEW METHODS ADOPTED

Now, since the middle of last year, "blanket" insurance has been abandoned, except as written by one or two companies at greatly increased rates. In lieu, three methods are employed now in the issue of "burglary only" and "theft" insurances, with the expectation that under each amounts of insurance will be carried very much more in proportion to the values at risk than ever heretofore. These revised methods or plans have been put into operation by the issue of three distinct policy contracts.

These contracts, while similar because under all three the property insured is divided into two classes, required separately insured, differ in the application of the insurance to the two classes, respectively. The two classes into which the insurance is required divided are: First, jewelry and kindred articles, and silverware and furs; second, money, and all personal and household effects not included in the first class, and exclusive also of wines, liquors, and alcoholic beverages.

Under one policy the Class 1 property is required insured to fully 80 per cent of the total value of such property owned by the assured; that is to say, the insurance on such property is subject to 80 per cent coinsurance.

Property included in Class 2 may or may not be insured, but if insured minimum insurance of $500 is required.

Under the second form of policy the insurance issued is required equally divided between the two classes.

Under a third form of policy liability as respect loss on the Class 1 property is limited to a specified percentage of the total sum insured under the policy. Such percentage may be 25 per cent or 50 per cent or even 100 per cent, according to the premium charged.

The insurance applied on Class 2 property to the face of the policy, less only such amount or amounts as may be paid in settlement of loss or losses on the Class 1 property.

Property covered includes all jewelry, silverware, furs, wearing apparel, and all other personal and household effects, except wines, liquors and other alcoholic beverages, unless separately and specifically insured. Liability for loss on money and securities and stamp and coin collections is limited, however, to $50, irrespective of the total amount of insurance for which the policy is issued.

LIQUOR LIABILITY EXCLUDED

Wines, liquors, and other alcoholic beverages, exclusion of: Prior to July 1, 1919, the effective date of the Eighteenth Amendment, wines, liquors, and other alcoholic beverages were the same as other personal effects included under the insurance granted by the policy, but after the prohibition law became effective liability for loss on wines, liquors, and other alcoholic beverages, owing to the then greatly increased hazard of loss by burglary or theft, as shown by the greatly increased number of claims for losses on such property, and because of the difficulties encountered in the determination of the then right cash value of that property after loss through burglary or theft, all liability for loss on wines, liquors, and other alcoholic beverages was excluded, except as to such wines, liquors, etc., as had been acquired by the assured prior to July 1, 1919, and as respects

such liability was limited to 20 per cent of the total amount of insurance issued under the policy.

Notwithstanding these limitations, the losses on wines and liquors during the latter part of 1919, and throughout the year 1920, assumed such proportions, not only as to number but as to the amount in value, and, at the same time, the difficulties in establishing right or fair cash values increased to such an extent, that finally wines, liquors, etc., were excluded absolutely from the insurance, except that they were separately and specifically insured at an abnormally high annual rate, viz., 7½ per cent, which is now charged for insurance thereon. In addition, the amount actually paid for the assured for such property was made the limit of liability thereon, subject to the insurance limit applicable to such property.

WHOSE PROPERTY COVERED

Whose property covered: First, of course, property belonging to the assured; second, property belonging to any relative of the assured permanently residing with the assured and either paying or not paying board or rent; third, property belonging to any other person (domestic servants and other employes excepted) permanently residing with the assured and not paying board or rent.

Property belonging to guests may be included by endorsement on the payment of additional premium.

Storerooms: Where the premises are located in a building in which more than two families reside (apartments and flat houses), such property as is regularly insured under the policy, excepting money, watches, precious stones, jewelry, silverware, and articles made, in whole or in part, of silver, gold, or platinum, will be covered to the extent of $50, and no more, while contained in one or more locked storerooms provided by the landlord for the use of the assured and located in the building as specified in the policy. This extension of the insurance is in recognition of the fact that very generally persons residing in flats or apartments have assigned to them one or more storerooms located either in the basement or elsewhere in the building, and that such storerooms are used for the storage of trunks and also of winter or summer clothing, and other effects not regularly in use. Because the exposure to loss from such storerooms, especially if located in the basement, is so far in excess of the exposure of the property in the living quarters, liability for loss from the storerooms is limited to $50. Such limit, however, may be increased as required, but only by endorsement and upon payment of considerably increased premium.

Rental (or sub-letting) of premises, furnished, to a reliable tenant is permitted provided it is to be occupied by the tenant

as his dwelling exclusively and not for use as a boarding or lodging house, or for any business or professional purpose. During the tenant's occupancy no liability is assumed on jewelry, furs, or silverware, or money or securities, or on any property belonging to the tenant or to any member of his household, nor for loss or damage caused by the tenant or by any member (except domestic servants) of his household.

NON-OCCUPANCY PROVISION

Non-occupancy: Four months' non-occupancy in each policy year is permitted without prejudice to the insurance under the policy. Extended periods of non-occupancy may be granted by endorsement and upon payment of fixed additional premium. Premises deemed unoccupied when the assured and all members of his household, including the domestic servants, are absent therefrom, not at the time actually dwelling therein.

Mechanics: The employment of mechanics and other work people in painting, papering, renovating, or making alterations, repairs, or changes is permitted without prejudice to the insurance.

Attention is called to the condition of the policy excluding liability for loss by burglary, larceny, or theft committed by any person whose property is covered under the policy. A person cannot steal from himself, but occasionally a dishonest child has stolen from his or her parents, more often dishonest relatives have stolen from their relatives with whom they reside. Two relatives residing together may claim ownership of the same jewelry or other articles in the premises, and one of the two may carry away the jewelry or articles in dispute, and the other relative may claim it was stolen by the relative carrying it away. I have learned of a case where an assured under a theft policy made claim on account of some of his wife's jewelry, which, after his wife's death, a brother-in-law residing at the time with the assured carried off, claiming ownership. The condition of the policy relieves the company of liability in such cases, and very properly so.

VARIOUS CLASSES OF BURGLARY INSURANCE

Mercantile Open Stock and Safe Burglary Coverage—Reasons for Grading—Co-Insurance—Policy Conditions—Policy Limitations—Warranties—Liability Conditions

By W. P. Learned, Vice-President, Fidelity & Casualty Co.

Last week, while defining many of the terms commonly used in the policies of the different burglary lines, my talk was particularly on residence burglary and residence burglary, theft and larceny policies. Today my talk will be on mercantile open stock insurance and mercantile safe and burglary insurance.

Last week, in closing, I referred to co-insurance as applied to the residence insurance and why the introduction of co-insurance into residence policies was unpopular and was opposed by certain companies, making necessary alternative forms which were not based upon any direct co-insurance condition.

In the mercantile open stock insurance line the same condition—insufficiency in the amount of insurance compared with the total value of the property exposed to loss confronted the companies, and even to a greater extent than in the residence lines.

In the opinion of many of the students among burglary insurance underwriters it has been directly due to this particular condition—insufficiency of insurance—that store burglary business has been conducted for years at a loss, and that unless premiums could be obtained on insurance in amounts in fair or reasonable proportion to the total value of stock exposed to loss, it would never be possible to place the business on a paying basis.

EFFECT OF HIGH RATES

While it is admitted that the majority of losses are in amounts of a few thousand dollars, it has been recognized that for any hope of a margin of profit the rate applicable to small amounts of insurance would have to be increased to where they become prohibitive to the majority of possible assureds among the merchants with limited stocks, the most desirable class, as a whole, for a company to carry insurance on. Furthermore, such further increases in rates would be discriminatory in favor of the merchants carrying large stocks and against the merchants with small stocks, and would, in

addition, unquestionably bring about "selection" directly against the companies. The high rates would be paid on what might be considered hazardous risks and by the dishonestly inclined, who might see in burglary insurance an opportunity to make money out of the insurance. We hear constantly of such cases in fire insurance, and such cases are certainly not unknown in burglary insurance.

RELIEF THROUGH CO-INSURANCE

Co-insurance offered the only relief, and therefore it was determined to restrict the issue of store burglary insurance issued subject to co-insurance, and while some companies favored one percentage as a basis of coinsurance, and others a higher or lower percentage, and some companies different percentages with rates graded accordingly (the Fidelity and Casualty Company being one of the companies favoring the last) the majority insistently urged one single percentage, and in deference to the majority, 80 per cent. has been adopted as the basis of the coinsurance; subject to which all mercantile open stock insurance can now only be written.

It was determined at the same time that now and hereafter instead of insuring the different kinds of merchandise, as heretofore, the insurance should be issued on the stock in trade of the assured and the risks—the stocks in trade—should be graded and rated according to their respective estimated hazards of loss, "hazards of loss" comprising the value of the merchandise in comparison with its bulk, the ready market for its disposal by thieves, and the difficulty of identification; in fact, all that would make the line of goods attractive to burglars.

In addition, the risks—the stocks in trade—were similarly graded as to the amounts of insurance required in order to comply with the 80 per cent. insurance condition. In explanation, on a stock of boots and shoes, $5,000 insurance, even if the total value of the stock should amount to $10,000 or $20,000, or over, would be deemed to be insurance up to 80 per cent. of its full value; whereas, a stock of silks, or furs, or kindred goods, valued at over $25,000, would require $20,000 insurance in order not to be penalized by reason of the 80 per cent. co-insurance condition.

OTHER REASONS FOR GRADING

There was another reason for such grading of the amounts of insurance required. While the larger merchants, carrying stocks valued at $50,000 or $100,000, or even more than $100,000—recognized as highly desirable business because of ex-

ceptional physical protection afforded, and because also of the absence of question as to the moral hazard—might be willing to carry insurance in the amount of $20,000, provided no penalty is attached, they might not or could not be induced to carry insurance to the full 80 per cent. of their total stock, or insurance in amount of $40,000 or $80,000 or over, recognizing that from $20,000 to $40,000 or possibly $50,000 would be beyond all question the maximum amount of any possible loss on any occasion.

Why, if co-insurance was considered impracticable in connection with residence theft insurance, largely because of the impossibility of popularizing any such condition among the insurers under residence theft policies, should it be insisted upon in the issue of mercantile open stock insurance? It is certainly not popular with merchants, but it is, and has been for a long time, a condition of fire insurance, and consequently it is far better understood by merchants than by the general run of individuals, especially women, comprising a considerable percentage of the persons in whose favor residence theft policies are issued.

OPEN STOCK CONDITIONS

Turning now from this co-insurance feature of policies, I will point out and explain different conditions of the mercantile open stock insurance. The term "burglary," as used in the policy, just as in the residence burglary policy, does not have the broad meaning as under the common law, nor does it have the meaning given the term in the statute of any State or in the majority of the States. In the open stock policies "burglary" is specifically defined to conform with the intent of the companies, as heretofore explained.

Liability under the policies is conditioned upon:

First, that the person or persons committing the burglary or effecting the loss shall have made felonious entry into the premises by use of actual force and violence. Felonious, in criminal law, as explained last week, in an act manifested—done with the intent to commit a felony—a criminal act of an aggravated kind punishable by imprisonment; and violence, in law, as also previously explained, is physical force unlawfully exercised; an act tending to intimidate or overawe by causing apprehension of bodily injury.

Second, that at the time of such entry the premises were not actually open for the transaction of business.

Third, that the force and violence used in making entry into the premises shall be evidenced by visable marks made upon the premises at the place of entry by tools, explosives, electricity or chemicals.

A LEADING DECISION

Right here I shall mention a very interesting mercantile open stock burglary case, and one in which the decision of the New York Court of Appeals is of great importance—the case of Rosenthal et al v. The American Bonding Company. The loss occurred when two employees of the assured, in opening the store in the morning, left the door unlocked but closed.

Shortly thereafter, two persons entered the store by turning the door knob, assaulted the clerks and stole certain property from the store. The New York Supreme Court, Appellate Division, First Department, held that the policy requirement as to visible marks was a mere evidenciary provision to prevent fraudulent claims, and to provide against cases where, in the absence of witnesses, a burglary is sought to be established by mere loss of the goods, but that it would not prevent recovery for a burglary committed in the presence of witnesses. However, the Court of Appeals reversed this decision and granted a new trial on the ground that this loss was due to a crime that was really a robbery or hold-up, or if it could be considered as a burglary in any sense of the word, it was not the particular kind of a burglary against which the company intended to provide insurance.

From the opinion rendered by the court I quoted last week: "If a policy of insurance is doubtful of tenor, the court should employ that interpretation which is most exacting against the insurer, who has prepared the contract, but if the contract is not of uncertain meaning, as has often been said, the court may not make a new one under the guise of construction."

Fourth, that neither the assured, nor any associate in interest, nor any servant or employee of the assured, nor any other person lawfully upon the premises, is a principal or an accessory in the commission or the attempted commission of the burglary.

Fifth, that there are regularly kept by the assured books and accounts, and that from such books and accounts the actual amount of the loss can be accurately determined by the company (the insurer).

OTHER CONDITIONS AND LIMITATIONS

The foregoing conditions are the five principal ones precedent to liability under the policy. Liability, however, is subject to certain other conditions and limitations clearly set forth in the policy and also to the full performance of the warranties in the policy schedule.

Among these certain other conditions and limitations I might mention liability is not assumed for loss or damage to plate glass

or lettering or ornamentation thereon, the reason being that such property should be covered by plate glass insurance, and proper specific premium paid therefor. That liability is not assumed for loss on property encumbered by chattel mortgage, this being because such encumbrance is considered to affect the moral hazard adversely.

That liability for loss on single articles of jewelry is limited to $50. This is to take care of the general run of jewelry stocks, exclusive of the more valuable articles which generally are kept locked in safes at night insured under regular safe burglary insurance at the rates specifically charged therefor.

The liability on pawned articles is limited to the amount advanced or loaned thereon, together with accrued interest at the legal rate. Such limitation fully covers the insurable interest of the assured. It makes his loss good, and there is no obligation resting on the insuring company to do more than that.

SHOW-WINDOW LIABILITY

That liability is not assumed for loss on any show case or show window (nor the contents of either) not opening directly into the interior of the premises. Formerly this exclusion clause read: "On any show case, or contents thereof, if located outside of the premises." Claim experience made it necessary to amend the clause to read as at present, because in some instances companies have been held liable for loss from show windows and show cases which, while a part of the premises, did not open directly into the premises, but were opened from the outside or from a vestibule or arcade, and in such cases the openings were protected by glass doors with the lightest kind of locks, sometimes even by small padlocks which were easily broken. The displayed goods in such show cases or show windows did not have the protection afforded the goods within the premises proper, and the companies had never intended to cover such goods.

To show how very necessary it is that the greatest care is required in drafting policies in order that the intent of the companies, and no more, may be clearly set forth, I cite a case of a year or two since in Peoria, Ill., where what is commonly called an "island" show case, located in the open vestibule or entrance to the store, was broken into through the door in the rear, opening not into the premises proper, but into the vestibule, and goods to the value of something over $2,000 were stolen therefrom.

There certainly was no intent on the part of the company to cover loss from such show case, which, in the eyes of the company, was located outside of the premises. The court, however, held the company liable, ruling that inasmuch as such show case was located within the building line and extended to and joined

at its top with the building, and heating pipes for at least a part of the building ran through such show case, that the show case was a part of the building and of the premises within the meaning of the policy, and that loss therefrom was loss from the premises within the meaning of the policy.

Prior to last year, when the present co-insurance policy was adopted, liability for loss from any show window on the premises, if broken into by the thief by breaking the plate glass thereof from the outside, or the street side, was limited to the sum of $200, unless additional insurance specifically applicable to contents of show windows was carried and the specific rates chargeable therefor were paid.

COVERING SHOW CASES

In the present policy there is no such limited liability on the contents of show windows. By some burglary underwriters, myself being one, that is a serious mistake. To my mind, the companies should not be exposed to loss in possibly considerable amounts on valuable goods, e.g., expensive fur garments, displayed throughout the night in show windows and protected only by the plate glass windows, except where the companies have knowledge of such exposure and receive adequate premium directly for the insurance applicable thereto.

The proponents of the elimination of the former $200 limit argued that it would be impracticable to exclude the contents of show windows when estimating the total value of the entire stock as the basis for the application of the 80 per cent co-insurance condition, particularly as the contents of the show windows fluctuate very considerably in value from time to time, and if the property contained in the show windows was included in the value upon which the co-insurance condition is applied it would be manifestly unfair to the assured than to limit the amount recoverable under the policy to $200 or any such sum.

Personally, I see very little, if any, merit in such contention. In the first place the specific limit applied only to loss effected by a thief who had broken into the show window by breaking the plate glass thereof from the outside, and full liability for loss from show windows is assumed where entry into the premises is effected in any other way or at any other point. Consequently, I see no reason why the contents of show windows should not be included in the total value upon which the co-insurance is based, even though in case the show window is broken into in the manner explained above the company limits its liability to a specific sum.

SCHEDULE WARRANTIES

The warranties in the schedule, the full performance of which is required, are the warranties relative to the employment of

watch service and the maintenance and continued use of such burglar-alarm service as is stated to be in use. That such warranties are required fully performed is not alone because discounts from the premium are allowed because of the services warranted, but very much more because the approval of the risks is dependent on such service or services, and the issuance of the policies by the company is conditional upon the performance of such services. Many a risk would be rejected were it not that inside night service is warranted or complete burglar-alarm service is guaranteed. Oftentimes, because of such services, larger lines of insurance are accepted by the companies than would be accepted and issued except for such service.

The warranties with respect (1) to the amount of fire insurance carried by the assured is important as showing the approximate total value of the assured's stock; (2) to previous losses suffered by the assured by burglary at the premises, or elsewhere, and to previous claims and indemnity payments received on account of same for any loss by burglary at the premises or elsewhere, and the other burglary insurances carried or applied for by the assured, and to any such insurance previously declined or canceled, are all statements or warranties enabling the companies to investigate and intelligently to pass upon the risks.

I deem it necessary again to define "premises," especially as limited in the mercantile open stock burglary policies. The term is limited (a) if the assured occupies the entire building designated in the schedule to the interior of said premises, meaning the entire building, cellar, halls and stairways; (b) if the assured occupies only a part of said building, to that portion actually occupied by the assured on the floor or floors designated in the schedule, thereby excluding all other parts of the building, such as public hallways, stairways, etc.

MORAL AND PHYSICAL HAZARDS

In the underwriting of mercantile open stock insurance the question of the moral hazard is quite as important as in underwriting of residence burglary and theft insurance. The physical hazard is even more so, partly due to the location of the premises and partly due to the fact that the premises are left at night without people being therein. Few mercantile open stock risks are issued by any company except after most careful inspection.

"Stone walls do not a prison make, nor do iron bars a cage," nor do they make a building, store or loft secure from burglary —oftentimes not even when supplemented by interior night watch service or by a most complete burglar-alarm system connecting all accessible and inaccessible openings and all walls, floors and ceilings with an outside central alarm station where people are on duty ready to respond to any alarm. While the

protective appliances and safeguarding services are given discount allowances, thereby lessening the premium charge, insurance companies greatly prefer the added protection and the decreased premiums to lack of such protection and the increased premiums.

As to the property covered under the policy, liability is assumed for the property belonging to the assured or which is held by the assured in trust, or on commission, or sold but not removed from within the premises, or is held by the assured in such capacity as to render the assured legally liable to the owner thereof for such loss or damage as is covered by the policy.

MERCANTILE SAFE COVERAGE

Passing now to the consideration of the mercantile safe burglary line, I should first explain that in this line there is no co-insurance condition, none being necessary, as, except when there is only a damage to be settled, there is rarely any such thing as a partial loss, and it is only in partial losses that co-insurance is of value to the insuring companies. When safes have once been forced the entire valuable contents are almost without exception carried off. It is therefore left entirely for an assured to determine the amount of insurance to be issued and paid for to fulfill his requirements.

The rates are flat rates per thousand, and are not, as in open stock insurance, decreased as the amount of the insurance is increased, because the first thousand dollars in value is exposed to no greater hazard of loss than is the fifth or tenth or twentieth thousand in value. The safe burglar will not be satisfied with a few thousand in value if there are many thousands in his grasp. He will carry off the entire lot. Safe burglary insurance is designated for merchants, such as jewelers, who have large value in merchandise of small bulk and for others accustomed or obligated to keep limited amounts of money in their stores or offices over night.

PROTECTION OF SAFES

The general run of office and store safes are of the fireproof kind, and while protection afforded against loss by fire is generally ample, the protection against successful attack by burglars is practically nil. Where, however, safes are of the burglar-proof type, or both fire and burglar proof, the protection against burglars is greater, but ordinarily not sufficient to warrant the keeping therein of money in very large amount or of securities of great value. Banks, trust companies and safe deposit companies are the proper places for the safekeeping of such property. Mercantile safes are oftentimes safeguarded by special protective devices and by systems of burglar alarms and night watch

service. In such cases proper deductions from rates are invariably allowed.

The policies not only cover loss of contents of the safe, but such damage as is occasioned by the burglars in forcing or attempting to force the safe, not alone to the safe and its contents, but also to the premises and the fixtures and furniture therein if the property of the assured, or where the assured is under a lease legally liable for such damage. This damage feature of the policy is a very valuable feature, as such property damage due to the use by the burglars of high explosives is oftentimes very considerable.

MEANING OF POLICY TERMS

In the safe burglary policies the terms "entry," "premises," "property" and "burglar proof," within the meaning of the policies, are especially defined and limited, to wit:

Entry—to the felonious and forcible opening of a safe, or vault, or chest, by the use of tools or electricity or chemicals or explosives directly upon the exterior walls thereof, or upon the outer or principal doors thereto. While it would not appear necessary to explain the reason for the requirement as respects "use of tools" or "use of explosives," as both are well understood, it may not be amiss to explain that nowadays the electric torch and the oxy-acetylene torch, and possibly also thermite, are used by burglars in burning openings into safes, more often into burglar-proof safes than into fireproof safes, as the latter can readily be forced by burglars' tools or by light charges of explosives.

Premises—exactly as in the open stock policy.

Property—to money, United States and Canadian bank notes, currency, coin, uncancelled postage and revenue stamps in current use, and war-saving and thrift stamps; to securities, checks, drafts, etc.; in fact, all negotiable and non-negotiable instruments purporting to represent money, to merchandise such as commonly carried in line of business in the schedule.

Burglar proof—to safe construction designed by manufacturers to furnish protection against burglary as distinguished from fire. Further limited as to walls and door of steel; of specified thickness of steel.

LIABILITY CONDITIONS

Liability under the mercantile safe burglary policy is conditioned upon:

First, that the property shall be feloniously taken at any time during the day or night from within any safe or chest or vault to which the insurance specifically applies, by a person after entry (as above defined) into such safe or vault while located in

the premises (as above defined), or while located elsewhere after removal from the premises by burglars. This last provision is made because in many cases the burglars have carried the safe or chest bodily away with them, where, presumably, they have forced and robbed it at their leisure. Companies recognize that they should cover the loss in such circumstances just the same as though the safe was actually broken into and robbed while still located in the premises.

Second, that from within any safe containing a burglar-proof chest the loss occurs from within the chest after entry has been made not only into the safe, but also into the chest in the manner provided, and also that from within a fire and burglar-proof safe, unless the loss occurs from within the burglar-proof part of the safe after entry has been made not only into the safe, but also into the burglar-proof part of the safe. This condition (treating both as one condition) is applicable only when the property is warranted to be under burglar-proof protection and the insurance is written at the lower rates applicable to such protection, and not where fireproof protection alone is warranted and the higher fireproof rates are paid.

Third, that at the time of the occurrence of the loss all doors to the safe or chest, from which the loss occurred, are properly closed and locked by all combination—and/or time locks, with which such doors are respectively provided. Liability is excluded if the entry into any safe or chest or vault is effected by unlocking the door thereof with a key or by manipulation of the combination lock. This exclusion is necessary because the moral hazard is of importance in this line as well as in the other burglary lines, and without such exclusion there might not be any conclusive means of ascertaining whether the safe had been actually locked when the loss occurred or whether it had been unlocked by an employe knowing the combination.

Notwithstanding all that has been said regarding the possible opening of safes by the manipulation of combination locks by persons not knowing the combination, it has always been impossible to obtain any verification of such statement, and it is safe to assume that such manipulation of regulation combination locks is impossible. Therefore, the exclusion in question is not an unfair one to the assured.

BOOKS MUST SHOW LOSS

Fourth, that just as in the mercantile open stock policy, books and accounts must be regularly kept, that the actual amount of the loss can be accurately determined therefrom by the companies; and that the same limits of liability on pawned articles applies and the same exclusion of liability if servants or em-

ployes of the assured, or other persons lawfully upon the premises, being concerned in effecting or attempting to effect loss, either as principal or accessory.

Likewise, the liability as conditioned on full performance of all warranties in the schedule relative to watch service and burglar-alarm systems, and as respects previous losses and previous claim payments, and also as respects insurance having been previously declined. In addition, the safe insured must be the safe described in the schedule, and all combination and time locks must be maintained in proper working order and regularly used throughout the currency of the insurance.

I believe I have quite thoroughly explained the insurance under the two forms of policies—the mercantile open stock form and the mercantile safe burglary form.

ROBBERY IN ITS VARIOUS FORMS

Bank Burglary, Hold-up and Safe Deposit Box Coverage—Terms of Contracts—Schedule Misstatements—Question of Negligence

By W. P. Learned, Vice-President, Fidelity & Casualty Company, of New York City

In today's lecture I shall endeavor to crowd in an exposition of (1) what is commonly known as the regular bank burglary and hold-up insurances; and (2) safe-deposit box insurance.

However, before discussing these different forms of insurances I deem it advisable to say a few words regarding the very important part that the automobile and its common use in all parts of the country has played in the increased hazard of loss through robbery on the highways and in offices and in banks, and through burglary of bank safes and vaults. The "get-away" of bank burglars and of highwaymen has always been an important factor in all attempted bank burglaries and highway robberies. Before the introduction and common use of automobiles bank burglars depended almost exclusively on boarding "freights" at water-tanks and at intersecting railroad points. Today they come by automobile (more often than not stolen), and oftentimes considerable distances, and they have their automobile nearby and ready for their immediate use in flight. Bank hold-up men, as well as pay-roll robbers, drive up suddenly in an automobile, which is left at the curb with the engine running, generally in charge of one of their party. They make hurried entrance into the bank and, after committing the robbery, hurried exit therefrom, and hurried flight in the car.

AUTOS AID DAYLIGHT ROBBERIES

Formerly, before the day of the automobile, daylight robberies in banks were almost a negligible quantity, except possibly in the territories and the states where gangs like the Jesse James gang operated. Originally, the bankers' burglary policy did not cover loss through daylight robbery or hold-up. Later on, in order to increase its popularity, the robbery feature was added, subject to 20 per cent limit of the total amount of insurance under the policy, such 20 per cent. being deemed sufficient to cover any possible loss of a bank's counter cash. Subsequently, such 20 per cent. was increased to 40 per cent., and then again, later on, it was increased to 100 per cent.; and the premium charged for the bank burglary hazard not being increased or affected by such

addition of the robbery feature, nor even when the limit applicable thereto was increased from 20 per cent to 100 per cent.

After the automobile came into such general use daylight robberies in banks, commonly called "hold-ups," continued to occur, and increased to such extent that from being more or less a negligible quantity, as compared with the night burglary hazard, they became the maximum hazard assumed by the companies, and the losses therefrom far outstripped the losses through night burglaries. This made necessary an absolute revision in the method of covering the two risks—that of the night burglary and that of the daylight robbery—and two or three years since the methods were revised requiring the two risks separately insured and separate specific premiums charged on each. As there had been no diminishing in the losses through night burglaries no change was made in the charge for the night burglary hazard. The change made was in an additional specific charge for the robbery hazard. In certain Western states continued bad experience necessitated an increase in the additional rate originally charged, and in certain of such states even such additional rates proved insufficient, and quite recently the rates applicable therein have been again increased from 50 per cent to fully 100 per cent.

When the robbery feature subject to the aforesaid limits was first added it was made a condition of liability for loss by robbery that the robbery should be witnessed by not less than two witnesses, or that in the absence of such witnesses the fact of the robbery should be established by other competent and conclusive evidence; and that any person connected with the bank, or any other person of good repute, would be accepted as a witness, provided such person had not been in collusion with the robbers.

Subsequently, this was changed and the fact of the robbery was required established by direct and affirmative evidence. But at the same time it was required warranted that all money in excess of some specified amount would be kept locked in the safe or vault under at least one combination-lock whenever one employee was left alone in charge while open for the transaction of business. The amount specified being made to conform to the business requirements of the different banks, subject, however, to reasonable limits in any case. The requirement of such warranty was, of course, to prevent exposure of an unnecessary amount on the counters or in the cash drawers in small one-man banks, or when in larger banks only one man would be present on duty in the bank, as, for example, during the noon hour. The warranty was certainly a very reasonable one, and not seriously objected to by the banks. This warranty, however, as also the condition above referred to, was eventually eliminated, but under the most serious protest from at least one company, whose protest was entirely disregarded.

Years back there was fair assurance of a reasonable margin of profit in the bankers' burglary line. Today, due far more to the daylight robberies, the margin of profit has been reduced almost to the vanishing point.

Having already said so much regarding the bankers' burglary line, possibly I had better reverse the order of my subject today and first talk on the bank burglary policy and the rules governing its issue and the rating system employed.

BANK BURGLARY POLICY

The rates for bankers' burglary insurance—both burglary and robbery—are annual rates. The insurance, however, may be issued for a term of three years but for no longer term. The reason for this latter is that experience within a period of three years might make it advisable to change the rates, possibly even several times.

Where the insurance is written under contract for three years the three-year premium is three times the annual rate less 10 per cent when paid in three annual installments of 50 per cent, 30 per cent, and 20 per cent, respectively. If, however, paid in advance it is subject to a further discount of 5 per cent.

The rates for the daylight robbery hazard under policies issued to banks are flat rates per thousand, differing, however, in different states in conformity to the past experience of the companies in such states, respectively. The only discount allowances made from such rates are:

(1) Where there is daytime special watch-service maintained in the banking room or in the corridor thereof.

(2) Where there is approved daytime burglar-alarm system connected either with outside central station or with loud-sounding gongs on the outside of the premises.

(3) Where the property covered by the insurance against loss is restricted to securities and/or silver and subsidiary coin.

The rates for the burglary hazard are based:

(1) On the character of the equipment, viz., the safe and vault construction, particularly the construction of the safe and vault doors.

There are eight different safe classifications, beginning with the ordinary fireproof safe and ending with the most approved round-door safe of solid steel construction of the highest known resisting qualities.

There are ten different vault classifications, beginning with the ordinary fireproof only vault and ending with the highest type of steel-lined vault with the heaviest and most approved door.

Then, of course, there are combinations of these different safes in the different vaults, making eighty basic combinations.

(2) On the sections of the country in which the risks are located. For such purpose the country has been divided into

four sections, based upon the estimated exposure of the banks to burglarious attacks, and on risks located in the four different territories or sections the basic rates are discounted by from 10 per cent. in the territory deemed the most hazardous to 40 per cent in the territory deemed the least hazardous. This last territory comprises the New England States, New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia.

(3) On the size or population of the towns or cities in which the risks are located, the population being accepted as more or less of a guide as respects the police protection afforded. The flat basic rate applies in all towns of less than one thousand population. Risks located in towns of one thousand and over receive the benefit of population discounts of from 10 per cent. allowed risks located in towns of from one thousand to two thousand population. Risks located in cities of twenty-five thousand population and over receive the benefit of a 40 per cent. discount.

(4) On each special safeguard employed. For example, night-watch service, burglar-alarm system, and certain specially approved mechanical protective devices. As all of these, with the discount allowances therefor, are specifically described in the manual, I do not deem it necessary to do more than simply mention them incidentally as I have above.

The discounts are not cumulative, but are required deducted successively.

EXCESS INSURANCE

Bankers' burglary and robbery insurance is not written as excess insurance, at least at any decreased rate, except when issued over primary insurance in amount of at least $100,000 under an "all loss policy" or "blanket bond" covering the identical exposure or exposures. The reason for not writing the insurance as excess insurance, at decreased rates, is that there is very little or no difference in the hazard of loss on the first thousand in value and all subsequent thousands, as when a bank's safe or vault has been successfully entered the entire safe contents thereof are invariably, or almost invariably, carried off. The reason for the exception in favor of primary insurance under an "all loss policy" or a "blanket bond" is that such policy and bond are now carried quite generally by the more or most important banks, which, while unwilling to increase the amounts thereof because of the high cost, due to the broad coverage granted, are willing to carry excess burglary and robbery insurance.

CONSIDERATION OF POLICY CONTRACT

Passing on to the consideration of the policy contract:

The policy contract now issued by all companies is one prepared by the insurance committee of the American Bankers' Association in conference with a committee from the Burglary

Association, and adopted and copyrighted by the Bankers' Association. While in such policy the interests of the insurance companies have been reasonably taken care of, excepting in certain particulars as hereinafter explained, on the other hand, the interests of the banks have been protected in every direction to the fullest extent.

The property covered by the policy, except as respects the damage feature, is restricted to money, viz., currency, coin, bank notes, bullion, uncanceled United States postage and revenue stamps in current use, and War Savings and "Thrift" stamps; and to securities, viz., all negotiable or non-negotiable instruments, documents, or contracts representing money or other property—such securities as are covered under the policy being limited to such as:

(1) Belong to the assured;

(2) Are held by the assured in trust or as collateral;

(3) Are held by the assured for safekeeping and of which the assured has a record from which the amount of loss can be accurately determined; and

(4) Are held by the assured in any capacity by reason of which the assured would be liable to the owner for their loss.

BURGLARY LIABILITY

Liability for loss by burglary is conditional upon the property being feloniously abstracted during the day or night from within that part of the safe or vault to which the insurance specifically applies by a person or persons who shall have made forcible entry thereinto by the use of tools, explosives, electricity, gas, or other chemicals, while such safe or vault is duly closed and locked and located in the premises or elsewhere after removal from the premises by burglars or robbers.

It is to be noted that while liability is assumed for loss occurring during either the day or night, such liability is conditional upon the safe or vault, to whichever the insurance applies, being at the time duly closed and locked, and that the loss is effected in the matter aforesaid. Also, that liability is assumed for loss effected as aforesaid even if the safe has been carried away bodily by the burglars or robbers from within the premises and thereafter has been forced and robbed.

Provision is made in the policy for the application of the insurance to property contained:

(1) In vault outside of any safe contained therein;

(2) In the safe within the vault;

(3) Within a burglar-proof chest in the safe within the vault;

(4) Within any part of a safe (not located within a vault); and

(5) Within a burglar-proof chest inside of such safe or within any designated part of such safe.

PREMIUM CHARGES

The premium charges are graded to correspond to the equipment protection afforded; *e.g.*, the rates applicable to the contents of an inner burglar-proof chest are less than those applicable to the contents of any part of the safe, because of the double protection.

Except where the insurance is specifically designated to apply otherwise and the additional rates applicable are charged, the liability for loss from a safe containing an inner steel burglar-proof chest is limited to the contents of the chest, except that 10 per cent., and no more, of the total sum insured applies automatically:

(1) To both money and securities in the safe outside of the chest, provided the safe itself is burglar-proof; or

(2) To securities, silver, and subsidiary coin only, if the safe is fireproof only.

Similarly, where the insurance is issued on the contents of a burglar-proof safe 10 per cent. of the amount of such insurance automatically applies in any vault (whether or not containing the said safe) located within the premises:

(1) On both money and securities, provided the door to the vault is constructed of steel at least 1½ inches in thickness; or

(2) On securities, silver, and subsidiary coin only, if the vault door is fireproof only, or if constructed of steel less than 1½ inches in thickness.

The reason for this automatic 10 per cent. coverage is that very generally banks are obliged to keep in their safes outside of the inner chest, or in the vault outside of the inner safe, silver, and oftentimes some of their securities on account of their bulk.

CONDITIONS OF INSURANCE

It is also conditions of the insurance:

(1) That where a safe is located in a vault entry in the manner above explained must be forced not alone into the safe but also into the vault.

(2) That where the insurance applies to the contents of an inner chest in the safe entry must be forced not alone into the chest but also into the safe itself.

(3) That where the insurance applies to property contained within a round- or screw-door safe, or any safe containing a round- or screw-door chest or compartment, that the loss must be from within the chest or compartment protected by the round- or screw-door.

ROBBERY LIABILITY

Liability for loss by robbery is conditional upon the loss oc-

curring from within any part of the premises occupied by the assured or its officers or employees exclusively. This is sufficiently broad to cover loss not only from within the regular banking enclosure, *i. e.*, the part behind the regular counters and cages, and also loss from within the private offices of the officials, from within the directors' room, and, in fact, anywhere from within the baking offices occupied exclusively in the conduct of the business of the assured.

LIMITS OF TERM ROBBERY

The term "robbery," as used in the bankers' burglary policy, is limited to a felonious and forcible taking of property:

(1) By violence inflicted upon the person or persons having the actual care and custody of the property;

(2) By putting such person or persons in fear of violence; or

(3) By overt, felonious acts committed in the presence of such person or persons and of which such person or persons were actually cognizant.

These three limiting conditions are very important, showing, as they do, that disappearance loss is not contemplated nor covered by the insurance, nor is a surreptitious taking of the property covered by the policy. A person in charge of the property must have the property feloniously and forcibly taken from him, or it must be feloniously and forcibly taken openly and with his cognizance, but without his connivance or consent, implied or otherwise.

MIS-STATEMENTS IN SCHEDULE

In order that the banks should not be held strictly responsible for errors not intentionally or fraudulently made in the description of the safe and vault equipment and of any protective appliances, the policy provides that in case of such mis-statements the insurance shall not be forfeited thereby; but if my reason of such mis-statements the hazard assumed is greater than that contemplated by the policy liability under the policy shall not be affected, but the assured shall be obligated to pay such additional premium as may be shown to be due for the actual hazard assumed, in accordance with the rates in the companies' published manual of rates in force at the date of the issue of the policy.

If, however, the hazard under the policy is less than that contemplated the company is obligated to refund to the assured any overcharge in premium, computed in the same manner. The foregoing is subject to the condition, however, that if for reasons beyond the control of the assured any safety or protective appliance fails to operate the bank shall provide at least one watchman to protect said safe or vault until all such appliances have been completely restored to their proper working condition; and, furthermore, that if the assured wilfully or negligently fails to

maintain any warranted service and, by reason of such failure, the hazard under the policy is greater than that originally contemplated, the liability of the company shall be limited to such amount of insurance as the premium paid would have purchased for the actual hazard at the rate applicable on the date of the issue of the policy.

REINSTATEMENT AFTER LOSS

The policy provides that upon any loss payment thereunder the insurance shall be immediately reinstated to apply exactly as it applied prior to the occurrence of the loss; provided, however, all damage occasioned by the burglary or robbery to any safe or vault insured under the policy shall have been repaired, and that all safety appliances shall have been completely restored to their former condition of safety, the bank being obligated to pay to the company additional premium on the amount of insurance so reinstated computed pro rata from the date of the occurrence of the loss to the date of expiry of the policy.

This provision of the policy is all in favor of the insured bank. It works more or less injustice on the insurance companies because, through application of the clause the companies might be required to assume liability possibly far in excess of what they would be willing or should reasonably be expected to carry—with such altogether inadequate protection. Payment of additional premium would fail to compensate for the excessive exposure.

EXCLUSION OF LIABILITY

Among the several conditions under which liability for loss is excluded, I will mention only:

(1) Failure to keep books so that therefrom loss can be accurately determined by the company;

(2) Criminal complicity of the assured or of any employee in the burglary or robbery;

(3) Occurring during or in consequence of fire in the premises, unless the fire was caused by the burglars or robbers in attempting to burglarize or rob the bank;

(4) Damage to the building, premises, or to the furniture or fixtures, caused by fire, however occasioned.

It would not appear at all necessary to explain the condition relative to the failure to keep proper books, as the reason therefor should be apparent.

As regards the exclusion of liability where the assured or employees are criminally implicated, I point out, first, that the insurance is in no sense Fidelity insurance, nor is it intended to be such; and, second, that employees in a bank of course have ample opportunity to arrange in many ways for the successful burglary or robbery of the bank—opportunity that others would not have.

With reference to the third exclusion mentioned, a fire in the premises might easily cause undue exposure of the bank's property to loss by burglary or robbery, an exposure not contemplated by the insurance nor reflected in the rates. If, however, the fire is caused by the burglars or robbers, then the burglary or robbery loss is assumed.

With reference to the fourth exclusion, many, if not most, companies are not permitted under the laws to assume fire losses, and, furthermore, in some states it is in violation of the law to combine in one policy insurance against fire and against burglary or robbery.

For the proper underwriting of risks by the companies the policies contain the customary statements relative to:

(1) Other similar insurance carried;

(2) Previous losses sustained by the assured within five years; and

(3) The declination of cancellation of such insurance by any other company or companies.

SAFE DEPOSIT BOX INSURANCE

There are companies which conduct a safe-deposit box business exclusively. In addition, a very great number of banks and trust companies throughout the country do a safe-deposit box business in addition to their banking business. These safe-deposit box companies and banks rent out safe-deposit boxes in their vaults to their customers but have no knowledge of the property or of the value of the property placed by such customers in the boxes, nor do they have access to such property, as, while the companies and banks have master keys, the customers alone have in their exclusive possession and control second keys necessary to open the boxes.

What responsibility is assumed by the companies and banks for the protection of such customers' property, particularly as against loss through burglary or robbery?

It cannot be gainsaid that the companies and banks assume a very grave moral responsibility to afford the property of such customers at least such protection as is ordinarily afforded by companies and banks of like importance and financial standing, and by companies and banks similarly located, and otherwise as might reasonably and properly be expected.

QUESTION OF NEGLIGENCE

The legal liability of such companies and banks depends very largely, if, perhaps, not wholly, on the question of negligence. If it can be shown that there has been criminal or undue negligence on the part of a bank or its employees and, due directly or indirectly to such negligence, there has been a loss by burglary or robbery of the contents of customers' safe-deposit boxes,

there is little doubt that the customers could sustain claims against the companies or banks for the amounts of their respective losses.

The general counsel of the American Bankers' Association has stated that in his opinion: "A bank is not an insurer of the contents of safety deposit boxes but is under duty to use reasonable care. If the contents are lost by burglary or robbery, the question is whether reasonable care has been exercised, which depends on the facts or circumstances of each particular case." Also, that: "Assuming the bank was held liable, the customer's statement as to the contents of the box would be *prima facie* evidence of the amount of the loss and unless the bank could rebut this testimony, the amount would be ascertained from the customer's statement."

The question of negligence is one resting generally with juries for determination. What might be deemed negligence in certain cases might not be considered negligence in others. Juries ordinarily can be relied upon in the determination of this question of negligence, as well as almost all other questions, to favor the pubic rather than an institution and/or an insurance company.

HOW LOSS MAY RESULT

Loss, therefore, from customers' safe-deposit boxes through either burglary or robbery may result in a direct money loss to the deposit company or bank, and the amount of such direct money loss may be so great as entirely to wipe out the entire capital and surplus of such deposit company or bank, except that with the leasing of the boxes they secure absolute and full releases from any and all liability on account of losses from the customers' boxes, however such losses are occasioned. It is very doubtful that the deposit companies would care to require such releases, and it is doubtful that the customers would be willing to execute such releases. Such releases, if required, would certainly create serious doubt in the minds of the customers as to the security of their valuables in their safe-deposit boxes.

Under all circumstances, does it not become the bounden duty of the deposit companies to furnish their safe-deposit box customers the utmost physical protection against loss of their valuables, supplementing such protection with the guarantee against loss furnished by insurance?

SAFE DEPOSIT BOX COVERAGE

Safe-deposit box insurance, as issued today, covers loss of securities, as defined in the regular bank burglary policy, and silverware, precious stones, and what is commonly included under the term "jewelry." It, however, does not cover money.

It is issued either to the deposit companies or banks on behalf of the lessees of the safe-deposit boxes contained within the

vaults as described in the schedule, or it is issued directly to safe-deposit box holders on the contents of their individual safe-deposit boxes.

Where issued to the deposit companies on behalf of the lessees liability for loss from any one box is limited to 10 per cent. of the total sum insured under the policy. This limitation is to insure to the insurance company insurance reasonably commensurate with the total exposure from all the boxes, and that loss from any one box may not consume the entire insurance. Where the aggregate amount of losses suffered by the various lessees exceeds the total sum insured, liability for loss from within any one box is limited to such proportion of the total sum insured as the total amount of loss frum such box bears to the aggregate amount of the losses from all boxes, subject, however, to the 10 per cent. limit as respects loss from any one box. This provision is made so that the several lessees suffering loss may share ratably in the insurance where the aggregate loss exceeds the total insurance.

INSURANCE TO INDIVIDUAL LESSEES

Where the insurance is issued directly to individual lessees it covers the lessees to the full face of the policy.

Liability under the safe-deposit box insurance is limited to loss by burglary or to loss by robbery, or to losses by both burglary and robbery, as specified in advance.

Loss by burglary and loss by robbery are both conditions on the commission of the burglary or robbery, exactly as in the regular bank burglary and robbery policy, and subject practically to the same conditions.

The actual amount of any loss and its occurrence within the term of the policy are required established by affirmative evidence. This differs from the regular bank burglary insurance in that in the bank insurance the amount of loss is required established by the bank's regular books of account.

In the safe-deposit box insurance the charge for the burglary hazard is the same as is required on securities under the regular bank burglary policy; *i.e.*, the regular money rate less 25 per cent. The charge for the robbery hazard is, however, the regular money rate less 40 per cent, instead of less 25 per cent., as required in the regular bank burglary policy; the reason being that it is considered that the hazards of loss by robbery on contents of safe-deposit boxes is less than on the bank's securities, which may be out on the counters or in the vault under no added protection.

LETTER WRITING AS A BUSINESS ASSET

Value of Good Correspondence—Courtesy An Outstanding Essential—Balanced Reasoning—Careless Expressions Susceptible of Misinterpretation

By William B. Mann, Superintendent of Agencies, Ocean Accident & Guarantee Corp.

One of the outstanding essentials of successful correspondence is to have it read and understood. Be brief, but not abrupt, and so govern your reasoning that it will be easily and speedily read and comfortably digested, then you may expect action.

Directness, by which you drive directly at the point and reach there with the fewest possible words and the clearest definite reasoning, is essential.

Expression being the impulse of your personality, should reflect yourself, and clear-cut expression should be as convincing in letter form as personal reasoning personally delivered.

Personality enters to a very considerable extent in correspondence. When absent, the letter carries no more conviction than a nursery rhyme. If the force of the author's personality is impressed, his letter carries an influence which lays the basis for his future operations. Many letters are written to please the eye of the author, and they thus fail to hit the mark with the recipient.

Conviction is the essential underlying requisite of successful reasoning. It is the reflection of your own thoughts, and unless you have convinced yourself that what you are proposing is the right and correct procedure, you cannot expect to convince the one you are addressing.

COURTESY OUTSTANDING ESSENTIAL

Courtesy is one of the outstanding essentials of business correspondence without which no letter can ingratiate itself and no medium of propaganda become successful. Courtesy is the cheapest and yet one of the best paying attributes, and those who pursue a business career in disregard of its value, have not attained that point of efficiency essential to a well-regulated business practice. With its assistance many obstacles are removed; without it subconscious resistance is met and your effort made difficult.

Selling force is an essential embodiment of any correspondence which undertakes to exploit or sell. Ideas are sold as well as merchandise. Reasoning is the process of convincing

one that your viewpoint is correct and that your proposal is entitled to consideration. Never argue with a man and seldom with a woman. Argument widens a difference of opinion, and particularly in the defenseless medium of correspondence, gets you nowhere.

VALUE OF BALANCED REASONING

Balanced reasoning in negotiation, in any phase of business dealings, is as essential as engineering balance in the efficient operation of an automobile or a well-designed piece of machinery. Warped judgment, biased viewpoint and practices that are inconsistent with equity, are destructive of all that is wholesome and effective in business correspondence.

Never become biased, and always remember that unless you can see the other side of the controversy and observe its equity as well as your own, you cannot hope to proceed toward a just solution, the only kind of a solution that is right.

Careless expressions, or the use of phrases susceptible of more than one interpretation, are dangerous. It is well to remember that a written document survives to make its appearance in unexpected circumstances. Never write anything that has not been so carefully weighed that you would be unwilling to have it appear at any time.

Do not assume that your reader is as familiar with the subject of your correspondence as you are lest you "shoot over his head." On the other hand, avoid too much detail for fear you force your reader's conclusion on an erroneous conception of your logic before you have reached the point of conviction.

EFFECTIVE SALES LETTER

To have a sales letter effective, the point must be early visible and the reader at once inoculated with an interest and a curiosity to go along with you until the objective of your effort has been driven home.

In sales correspondence, talk in terms of the reader's personal needs. Then you are sure to advocate something that he wants and will reach for.

If your correspondence does not tell its recipient something that he is better off for knowing, it will fall short of the mark.

Do not expect to have anything that does not sound true believed. The best merchandise is usually exploited in temperate language.

Do not expect to have any pronouncement that is hard to understand, productive of results.

You will do well to read advertisements of something you think you know all about. It is often possible to get a new idea that can be applied successfully to your own work.